

# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: FEBRUARY 3, 1992**

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# **INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE**

## **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

## **ADOPTION AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

## **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

## **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# NORTH CAROLINA REGISTER



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*Publication Schedule*  
 (October 1991 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
*****						
10/15/91	09/24/91	10/01/91	10/30/91	11/14/91	11/20/91	01/02/92
11/01/91	10/11/91	10/18/91	11/16/91	12/01/91	12/20/91	02/03/92
11/15/91	10/24/91	10/31/91	11/30/91	12/15/91	12/20/91	02/03/92
12/02/91	11/07/91	11/14/91	12/17/91	01/01/92	01/20/92	03/02/92
12/16/91	11/21/91	12/02/91	12/31/91	01/15/92	01/20/92	03/02/92
01/02/92	12/09/91	12/16/91	01/17/92	02/01/92	02/20/92	04/01/92
01/15/92	12/20/91	12/31/91	01/30/92	02/14/92	02/20/92	04/01/92
02/03/92	01/10/92	01/17/92	02/18/92	03/04/92	03/20/92	05/01/92
02/14/92	01/24/92	01/31/92	02/29/92	03/15/92	03/20/92	05/01/92
03/02/92	02/10/92	02/17/92	03/17/92	04/01/92	04/20/92	06/01/92
03/16/92	02/24/92	03/02/92	03/31/92	04/15/92	04/20/92	06/01/92
04/01/92	03/11/92	03/18/92	04/16/92	05/01/92	05/20/92	07/01/92
04/15/92	03/25/92	04/01/92	04/30/92	05/15/92	05/20/92	07/01/92
05/01/92	04/10/92	04/17/92	05/16/92	05/31/92	06/20/92	08/03/92
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06/15/92	05/25/92	06/01/92	06/30/92	07/15/92	07/20/92	09/01/92
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07/15/92	06/24/92	07/01/92	07/30/92	08/14/92	08/20/92	10/01/92
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08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
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09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93

\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

EXECUTIVE ORDER NUMBER 159  
NORTH CAROLINA GOVERNOR'S  
COMMISSION ON WORKFORCE  
PREPAREDNESS

WHEREAS, the final report of the previous Governor's Commission on Workforce Preparedness has increased public awareness in connection with the impending skills crisis in North Carolina; and

WHEREAS, an education-economic development link has been forged by the rapid evolution in technological advancements and the globalization of the economy; and

WHEREAS, North Carolina's competitive position in the new emerging global economy is threatened by low levels of educational attainment among some members of our population; and

WHEREAS, the existing vocational, basic and remedial education, employment, and job training systems lack coordination; and

WHEREAS, this lack of coordination makes it difficult to ascertain duplication of services and program impact, and more importantly, does not allow for a serious analysis in determining the responsiveness of the system in meeting the needs of both employers and individuals in need of program services; and

WHEREAS, the previous Governor's Commission on Workforce Preparedness saw the need for its "permanent embodiment" and the need for "establishing a comprehensive and strategic planning system for responding to the impending workforce preparedness crisis";

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT

(a) Executive Order Number 107 is hereby terminated, the purpose of the Governor's Commission on Workforce Preparedness established in that Order having been accomplished.

(b) There is hereby established the North Carolina Governor's Commission on Workforce Preparedness ("Commission").

Section 2. MEMBERSHIP

(a) The membership shall consist of the North Carolina Job Training Council and the North Carolina Advisory Council on Vocational and

Applied Technology Education. The Commission shall report directly to the Governor.

(b) Notwithstanding the directives of this Executive Order, the two Councils shall continue to perform all duties and responsibilities granted under their respective federal and state mandates.

Section 3. CHAIRPERSON

The Governor shall appoint a chairperson from among the members of the Commission to serve at the Governor's pleasure.

Section 4. EXECUTIVE BOARD

(a) The Governor shall select from among the members of the Commission an Executive Board ("Board") consisting of not less than seven members; provided, however, that a majority of the Board shall be representative of the private sector to the extent practicable. The Board shall provide leadership and guidance to the Commission and all other boards, councils, and committees specified in this Order in carrying out the duties and responsibilities outlined in Section 9.

(b) The Chairperson of the Commission shall also serve as Chairperson of the Board.

(c) The Governor or his designee shall serve as an ex-officio member of the Board.

Section 5. MEETINGS

The Commission or the Board shall meet at such times and locations as designated by the Chairperson.

Section 6. QUORUM

(a) A simple majority of the Commission shall constitute a quorum for the transaction of business by the Commission.

(b) A simple majority of the Board shall constitute a quorum for the transaction of business by the Board.

Section 7. BYLAWS

Both the Commission and the Board shall establish such bylaws as are necessary and appropriate for proper implementation of the directives of this Executive Order and which are consistent with applicable law.

Section 8. FUNCTION

(a) The two Councils shall act in partnership as a single Commission in providing leadership for coordination and strategic planning of workforce preparedness policy.

(b) An Inter-Agency Coordinating Committee (ICC) shall be created to include senior-level management representation from each state department designated as a Workforce Preparedness Program in Section 10(b). The ICC will provide technical and staff support to

both the Commission and the Board. The Chairperson and membership of the ICC shall be appointed by the Chairperson of the Commission.

**Section 9. PURPOSE**

The Commission shall perform the following duties and responsibilities:

- (a) Advise and recommend to the Governor, General Assembly, state departments, other public agencies, and the private sector policies and programs that enhance North Carolina's economy through the development of the State's workforce.
- (b) Direct coordination among all designated programs identified under Section 10, provided that such coordination shall not interfere with federally mandated duties and responsibilities.
- (c) Establish criteria to facilitate the creation of a comprehensive Workforce Preparedness System that is market-driven and customer-focused. The criteria shall include, but not be limited to:
  - (1) Standards for establishing common definitions and assessment criteria to provide convenient entry at any point into the comprehensive systems; and
  - (2) Standards for creating a data collection system to facilitate better evaluation and more consistent reporting methods and linking of data systems to allow tracking of clients throughout the various programs in the comprehensive system; and
  - (3) Standards for developing program evaluation methods (and procedures) to assess actual program outcomes.
- (d) Submit to the Governor and General Assembly a biennial strategic plan for Workforce Preparedness to include, but not be limited to:
  - (1) A statement of goals and objectives for the coming biennium; and
  - (2) An inventory and assessment of all programs identified as part of the workforce preparedness system under Section 10 provided that such inventory and assessment shall not interfere with federally mandated duties and responsibilities; and
  - (3) An assessment of the vocational education, basic and remedial education, employment, and job training needs of the State's labor market; and
  - (4) An evaluation of each program in terms of consistency in meeting state goals and objectives, and reaching desired outcomes in relation to the needs of employers and individual citizens who are in need of
- (5) Recommendations for policy changes and funding to ensure effective implementation of the comprehensive system; and
- (6) Recommendations for reducing program duplication and effecting cost savings and filling gaps in existing policies and programs.
- (e) Develop and promote strategies for cooperation between education, government and the private sector and which leverage private resources for the development of the State's Workforce Preparedness system. These strategies shall specifically focus on promoting school-to-work transition programs for high school students and modernization of the workplace through high performance work organizations.

**Section 10. WORKFORCE PREPAREDNESS PROGRAMS AND AGENCIES**

(a) Subject to their federally mandated duties and responsibilities, the following federal resources programs are hereby designated as Workforce Preparedness Programs:

- Adult Education Act
- Carl D. Perkins Vocational and Applied Technology Education Act
- Job Training Partnership Act
- Wagner-Peyser Act
- Title IV of the Social Security Act (JOBS -- Welfare-to-Work)
- Title IX of the Social Security Act (Miscellaneous Provisions Relating to Employment Security)
- Vocational Rehabilitation Act
- National Apprenticeship Act
- Food Stamp Act (Workfare)
- Displaced Homemakers Self-Sufficiency Assistance Act
- Internal Revenue Code of 1986 (Targeted Jobs Tax Credit, Work Incentive Program)
- Chapter 2 of the Trade Act (Adjustment Assistance or Workers)
- Title V of the Older Americans Act (Community Service Employment)
- Veteran's Job Training Act.

(b) All State resources programs that are vocational -, basic and remedial education -, employment -, and job training-related are hereby designated as Workforce Preparedness Programs.

(c) The Departments of Economic and Community Development, Community Colleges, Labor, Public Instruction, Human Resources, Corrections, and Administration, and all local

## *EXECUTIVE ORDER*

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agencies that provide vocational education, basic and remedial education, employment, and job training services are hereby designated as members of the Workforce Preparedness System.

### Section 11. COOPERATION OF STATE AGENCIES

On request all agencies and departments of the State of North Carolina shall cooperate with the Commission and the Board in their duties and responsibilities as established by this Executive Order.

### Section 12. ADMINISTRATION AND EXPENSES

Members shall receive per diem and necessary travel and subsistence expenses in accordance with N.C.G.S. 138-5, 138-6, or 120-3.1.

This Executive Order shall be effective as of January 3, 1992, and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 6th day of January, 1992.

**VOTING RIGHTS ACT FINAL DECISION LETTERS**

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*[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

JRD:LLT:ACJ:tlb  
DJ 166-012-3  
91-4043

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

December 20, 1991

Richard J. Rose, Esq.  
Poyner & Spruill  
P. O. Box 353  
Rocky Mount, North Carolina 27802

Dear Mr. Rose:

This refers to three annexations (Ordinance Nos. 91-190, 91-184 and 91-189) and the designation of the annexed areas to election districts for the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 28, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section



*VOTING RIGHTS ACT FINAL DECISION LETTERS*

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U.S. Department of Justice  
Civil Rights Division

JRD:GS:TGL:lrj  
DJ 166-012-3  
91-4235  
91-4236

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

January 7, 1992

Michael Crowell, Esq.  
Tharrington, Smith & Hargrove  
P. O. Box 1151  
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the 1991 redistricting plans for the board of commissioners and the board of education in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submissions on November 8, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

*VOTING RIGHTS ACT FINAL DECISION LETTERS*

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U.S. Department of Justice  
Civil Rights Division

JRD:MAP:DOW:gmh  
DJ 166-012-3  
91-4481

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

January 17, 1992

Michael Crowell, Esq.  
Tharrington, Smith & Hargrove  
P. O. Box 1151  
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the change in the method of election from at large to two double-member districts and a single-member district, the districting plan, an increase in the number of city councilmembers from four to five, the method of staggering terms of office, the implementation schedule, and the procedures for conducting the May 1992 special election for the City of Roanoke Rapids in Halifax County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 5, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

**TITLE 2 - DEPARTMENT OF  
AGRICULTURE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Structural Pest Control Committee intends to amend rule(s) cited as 2 NCAC 34 .0101 - .0102, .0302, .0313, .0318, .0601 - .0605, .0902, .1001; and adopt rule(s) cited as 2 NCAC 34 .0329, .0406, .1201 - .1206.*

*The proposed effective date of this action for 2 NCAC 34 .1201 - .1206 is May 1, 1992; and for 2 NCAC 34 .0101 - .0102, .0302, .0313, .0318, .0329, .0406, .0601 - .0605, .0902, .1001 is July 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on February 18, 1992 at the Board Room, Agriculture Building, 2 W. Edenton St., Raleigh, N.C. 27601.*

*Reason for Proposed Action: 2 NCAC 34 .1201 - .1206 - Establishes procedures for contested cases. 2 NCAC 34 .0101 - .0102, .0302, .0313, .0318, .0329, .0406, .0601 - .0605, .0902, .1001 - Makes various changes in requirements applicable to structural pest control licensees and certified applicators, such as written agreements with property owners, recordkeeping, financial responsibility, time for commencing disciplinary actions, and technical and wording changes.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. Comments may be submitted in writing no later than March 4, 1992 by mail, addressed to the Chairman of the North Carolina Structural Pest Control Committee, P.O. Box 27647, Raleigh, NC 27611.*

**CHAPTER 34 - STRUCTURAL PEST CONTROL  
DIVISION**

**SECTION .0100 - INTRODUCTION AND  
DEFINITIONS**

**.0101 INTRODUCTION**

(a) Applicable to licensees only:

- (1) All licensed structural pest control operators shall faithfully and honestly carry out the provisions and terms of all contracts into which they enter for the control of structural pests.
- (2) In addition to following all minimum requirements outlined in the rules and regulations herein, licensed structural pest

control operators shall be responsible for obtaining satisfactory control of all insects, rodents, fungi, or other pests indicated in the control agreement(s).

- (3) Licensed structural pest control operators shall be responsible for obtaining satisfactory control of active infestations of pests for which control agreements were entered into prior to July 1, 1955, if contracts covering said agreements are currently effective.
- (b) Applicable to both licensees and certified applicators:
  - (1) The methods and materials used in structural pest control procedures shall be in accordance with the current label registrations of federal and State of North Carolina agencies responsible for making such registrations.
  - (2) The possession, usage, application, storage, and disposal of all pesticides and all pesticide containers shall be in conformity with all federal and North Carolina State laws and regulations governing the possession, usage, application, storage, and disposal of pesticides and pesticide containers.
  - (3) Licensed structural pest control operators or their authorized agents and certified applicators (~~except those not employed by a licensee and not using a restricted use pesticide~~) shall maintain at their business location(s) copies of current registered labels for all pesticides used. Such labels shall be made available for inspection upon request of the ~~enforcement agency~~ Division or the ~~committee~~ Committee.

Statutory Authority G.S. 106-65.29.

**.0102 DEFINITIONS**

For the purpose of interpretation of the rules, regulations, definitions, and requirements of the North Carolina Structural Pest Control Committee and the Structural Pest Control Law, and unless otherwise required by the context, the following definitions shall prevail, to wit:

- (1) "Act and/or law" means the Structural Pest Control Act of North Carolina of 1955.
- (2) "Active infestation of a specific organism" means evidence of present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (3) "Acutely toxic rodenticidal baits" means all baits that contain rodenticides other than barium carbonate, norbormide, red squill, and the anticoagulants.

- (4) "Board of Agriculture" means the Board of Agriculture of the State of North Carolina.
- (5) "Commercial certified applicator" shall mean any certified applicator employed by a licensed individual.
- (6) "Common laborer" as used in G.S. 106-65.31 of the Structural Pest Control Act shall mean an employee of a licensed structural pest control operator who does not engage in or supervise the mixing or application of pesticides for the control of structural pests.
- (7) "Commercial structure" means any structure which is not a residential structure; including but not limited to shopping centers, offices, nursing homes and similar structures.
- (8) "Complete surface residual spray" means the over-all application of any pesticide by spray or otherwise, to any surface areas within, on, under, or adjacent to, any structure in such a manner that the pesticide will adhere to surfaces and remain toxic to household pests and rodents or other pests for an extended period of time.
- (9) "Continuing education units" means units of non-credit education awarded by the Division of continuing education, North Carolina State University or comparable educational institution, for satisfactorily completing course work.
- (10) "Continuing certification unit" means a unit of credit awarded by the Committee upon satisfactory completion of one clock hour of instruction in ~~any~~ an approved course ~~of study~~ (one CCU is approximately equal to one-tenth CEU of approved course work).
- (11) "Deficient soil sample" shall mean any soil sample which, when analyzed, is found to contain less than 25 percent of the termiticide applied by a licensee which would be found if the termiticide had been applied at the lowest concentration and dosage recommended by the labeling.
- (12) "Department" means the Department of Agriculture of the State of North Carolina.
- (13) "Disciplinary action" means any action taken by the Committee as provided under the provisions of G.S. 106-65.28.
- (14) "Division" means the Structural Pest Control Division of the Department of Agriculture of the State of North Carolina.
- (15) "Enclosed space" means any structure by whatever name known, including household structures, commercial buildings, warehouses, docks, vacant structures, and places where people congregate, such as hospitals, schools, churches, and others; railroad cars, trucks, ships, aircraft, and common carriers. It shall also mean vaults, tanks, chambers, and special rooms designed for use, being used, or intended to be used for fumigation operations.
- (16) "Enforcement agency" means the Structural Pest Control Division of the Department of Agriculture of the State of North Carolina.
- (17) "EPA" means the Environmental Protection Agency of the United States Government.
- (18) "EPA registration number" means the number assigned to a pesticide label by EPA.
- (19) "Flammable pesticidal fog" means the fog dispelled into space and produced:
  - (a) from oil solutions of pesticides finely atomized by a blast of heated air or exhaust gases from a gasoline engine, or from mixtures of water and pesticidal oil solutions passed through a combustion chamber, the water being converted to steam, which exerts a shearing action, breaking up the pesticidal oil into small droplets (thermal fog); or
  - (b) from oil solutions of pesticides which are forced through very narrow space by centrifugal force and atomized as they are thrown off into the air (mechanical or cold fogs).
- (20) "Fog or fogging" means micron sized particles of pesticide(s) dispersed by means of a thermal generator.
- (21) "Fumigation" means the use of fumigants within an enclosed space, or in, or under a structure, in concentrations which may be hazardous to man.
- (22) "Fumigation crew" or "crew" means personnel performing the fumigation operation.
- (23) "Fumigation operation" means all details prior to application of fumigant(s), the application of fumigant(s), fumigation period, and post fumigation details as outlined in these Rules and Regulations.
- (24) "Fumigation period" means the period of time from application of fumigant(s) until ventilation of the fumigated structure(s) is completed, and the structure or structures are declared safe for occupancy for human beings or domestic animals.
- (25) "Fumigator" means a person licensed under the provisions of G.S. 106-65.25(a)(3) or certified under the provisions of ~~G.S. 106-65.25(b)(1)~~ G.S. 106-65.25(e)(1) to engage in or supervise fumigation operations.

- (26) "Gas-retaining cover" means a cover which will confine fumigant(s) to the space(s) intended to be fumigated.
- (27) "General fumigation" means the application of fumigant(s) to one or more rooms and their contents in a structure, at the desired concentration and for the necessary length of time to control rodents, insects, or other pests.
- (28) "Household" means any structure and its contents which are used for man.
- (29) "Household pest control" means that phase of structural pest control other than the control of wood-destroying organisms and fumigation and shall include the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradicating, and repelling household pests and rodents.
- (30) "Inactive license" shall mean any structural pest control license held by an individual who has no employees and is not engaged in any structural pest control work.
- (31) "Infestation of a specific organism" means evidence of past or present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (32) "Inspection for a specific wood-destroying organism" means the careful visual examination of all accessible areas of a building and the sounding of accessible structural members to determine the presence of and the damage by that specific wood-destroying organism.
- (33) "Inspector" means any employee of the Structural Pest Control Division of the Department of Agriculture of the State of North Carolina.
- (34) "Jobs not meeting the minimum requirements of these Rules and Regulations" means any job that is not treated in accordance with the minimum requirements as herein set forth.
- (35) "Licensed structural pest control operation," or "pest control operation," or "operator," or "licensed operator" means any person licensed under the provisions of G.S. 106-65.25(a) or unlicensed who, for direct or indirect hire or compensation is engaged in the business of controlling, destroying, curbing, mitigating, preventing, repelling, offering advice on control methods and procedures, inspecting and identifying infestations and populations of insects, rodents, fungi, and other pests within, under and on structures of any kind, or the nearby surrounding ground areas or where people may assemble or congregate including work defined under G.S. 106-65.24(23).
- (36) "Liquefied gas aerosol" means the spray produced by the extreme rapid volatilization of a compressed and liquefied gas, to which has been added a non-volatile oil solution containing a pesticide.
- (37) "Non-commercial certified applicator" shall mean any certified applicator not employed by a licensed individual.
- (38) "Open porch" means any porch without fill in which the distance from the bottom of the slab to the top of the soil beneath the slab is greater than 12 inches.
- (39) "Percolation" (as used in Rule .0503(c)(2) of ~~Section .0500~~ this Chapter) means the leakage or movement of a pesticide from the initial point of application by the action of the water.
- (40) "Residential structure" means any structure used as a permanent dwelling such as a single- or multi-family home, a condominium or townhouse or an apartment.
- (41) "Secretary" means the Secretary to the North Carolina Structural Pest Control Committee.
- (42) "Service vehicle" means any vehicle used to transport the licensee or certified applicator or serviceman and/or their equipment and pesticides used in providing structural pest control services.
- (43) "Slab-on-ground" means a concrete slab in which all or part of that concrete slab is resting on or is in direct contact with the ground immediately beneath the slab.
- (44) "Solid masonry cap" means a continuous concrete or masonry barrier covering the entire top, width and length, of any wall, or any part of a wall, that provides support for the exterior or structural parts of a building.
- (45) "Space spray" means any pesticide regardless of its particle size, which is applied to the atmosphere within an enclosed space in such a manner that dispersal of the pesticide particles is uncontrolled. Pesticidal fogs or aerosols, including those produced by thermal-aerosol generators (fogging machines), shall be considered space sprays.
- (46) "Spot fumigation" means the application of a fumigant to a localized space or harborage within, on, under, outside of, or adjacent to, a structure for local household pest or rodent control.
- (47) "Spot surface residual spray" means the application of pesticidal spray directly to a surface and only in specific areas where necessary and in such a manner that the pesticidal material will largely adhere to the

surface where applied and will remain toxic to household pests or rodents or other pests for which applied for an extended period of time.

- (48) "Structure" means all parts of a building, whether vacant or occupied, in all stages of construction.
- (49) "Structural pests" means all pests that occur in any type of structure of man and all pests associated with the immediate environs of such structures.
- (50) "Sub-slab fumigation" means the application of a fumigant below or underneath a concrete slab and is considered spot fumigation.
- (51) "Telephone answering service location" means any location used for the sole purpose of receiving telephone messages.
- (52) "Termiticide(s)" (as used in Rule .0503, Subterranean Termite Control, and Rule .0505, Subterranean Termite Prevention) means those pesticides specified in Rule .0502, Pesticides for Subterranean Termite Prevention and or Control.
- (53) "To use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling. Provided that, the term shall not include:
  - (a) applying a pesticide at any dosage, concentration or frequency less than that specified on the labeling;
  - (b) applying a pesticide against any target pest not specified on the labeling if the application is to the site specified on the labeling, unless the EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling;
  - (c) employing any method of application not prohibited by the labeling.
- (54) "Type of treatment" means the method used to apply a pesticide formulation to a specific location.
- (55) "Unauthorized personnel" means any individual or individuals not given specific authorization by the licensee or certified applicator to areas to which access is restricted by these regulations.
- (56) "Under direct supervision of" means the act or process whereby application of a pesticide is made by a competent person acting under the instructions and control of a licensee or certified applicator who is responsible for the action of that person and who is available if and when needed, even though such licensee or certified applicator

is not physically present at the time and place the pesticide is applied.

- (57) "Waiver" means a standard form prescribed by the Committee which will, when completed correctly, permit the licensee to deviate from or omit one or more of the minimum treatment methods and procedures for structural pests which are set forth in the Committee rules, regulations, definitions and requirements.
- (58) "Wood-destroying insect report" means any written statement or certificate issued, by an operator or his authorized agent, regarding the presence or absence of wood-destroying insects or their damage in a structure.
- (59) "Wood-destroying organism" is an organism such as a termite, beetle, other insect, or fungus which may invade, inhabit, devour, or destroy wood or wood products and other cellulose material found in, on, under, in contact with, and around structures.
- (60) "Wood-destroying organism report" means any written statement or certificate issued, by an operator or his authorized agent, regarding the presence or absence of wood-destroying organisms or their damage in a structure.

*Statutory Authority G.S. 106-65.29.*

#### SECTION .0300 - LICENSING AND CERTIFICATION

##### .0302 APPLICATION FOR LICENSES AND CARDS: EXAMINATION

- (a) Application for licenses under the provisions of G.S. 106-65.26(a) and (c):
  - (1) Application for examination shall be on a regular form prescribed by the Division. All examinations shall be maintained and administered by the Committee secretary. The Committee may review the examinations and make recommendations regarding changes in same.
  - (2) Upon approval of the application for examination, the Committee secretary shall notify the applicant of said approval and provide the necessary form(s) for the applicant to pre-register for the examination as required in Rule .0302(c), Paragraph (c) of this Rule.
  - (3) Applications to take the examination shall be either typed or printed in ink and sworn to before a notary public or some other official authorized by law to administer oaths.

- (4) A clear full-face, head, and shoulder photograph of the applicant, taken within the preceding 12 months of the date of application, and not less than two and one-half inches square, shall be attached to the application.
- (5) All applications to take the examination shall be retained by the office of the Committee secretary. All documents filed in support of an application shall be kept by the office of the Committee secretary; provided, however, that the Committee may at its discretion permit such documents to be withdrawn upon substitution of a true copy. All examinations shall remain the property of the Committee.
- (6) An applicant who gives or receives unauthorized assistance during an examination shall be dismissed from the examination and his markings or results shall be voided and said applicant's examination fee shall be forfeited. Such applicant shall not be permitted to take a re-examination for a period of six months from the date of the examination.
- (7) No person shall be admitted to the examination room except members of the Committee, the attorney for the Committee, the examining personnel, employees of the Structural Pest Control Division, and the applicants for licenses.
- (8) Any applicant making a score of 70 percent or more on any license examination(s) shall be issued a license in that phase(s) of structural pest control after making proper application therefor.
- (9) The applicant shall furnish such information as the committee may require to establish that said applicant possesses qualifications as specified in G.S. 106-65.26 of the act for the particular license(s) which he seeks. The Committee, or its authorized representatives, may make such investigations as it deems necessary with respect to the applicant's qualifications.
- (10) All applicants passing the examination(s) for licenses shall apply for said licenses within six months from the date on which the examinations were passed. If such applicants fail to make application for said licenses, within the specified period, such applicants shall be required to take and satisfactorily pass re-examinations covering phases of structural pest control work for which licenses were applied before said licenses are issued.
- (11) If an applicant [within 60 days after notification that he has failed an examination] requests to review the examination(s), the Division shall allow such review during the earliest possible regular review session.
  - (b) Application for certified applicator's identification card under the provisions of G.S. 106-65.26(a) and (b):
    - (1) Applications filed pursuant to G.S. 106-65.26(a) and (b) shall be on a regular form prescribed by the Division.
    - (2) An applicant for a certified applicator's identification card in any phase of structural pest control shall furnish such information as the Committee may require to establish that said applicant possesses qualifications as specified in G.S. 106-65.26 of the act for the particular certified applicator's identification card which he seeks. The Committee or its authorized representatives, may make such investigations as it deems necessary with respect to the applicant's qualifications.
  - (3) All applications for certified applicator's identification cards under the provisions of G.S. 106-65.26(a) and (b) shall be retained by the office of the Committee secretary. All documents filed in support of an application shall be kept by the office of the Committee secretary; provided, however, that the Committee may at its discretion permit such documents to be withdrawn upon substitution of a true copy. All examinations shall remain the property of the Committee.
  - (4) Any applicant making a score of 70 percent or more on the core certification examination and on any certified applicator's examination(s) shall be issued a certified applicator's identification card in that phase of structural pest control after making proper application therefor.
  - (5) All applicants passing the examination(s) for certified applicator's identification cards shall apply for said cards within six months from the date on which the examinations were passed. If such applicants fail to make application for said certified applicator's identification cards within the specified period, such applicants shall be required to take and satisfactorily pass re-examinations covering phases of structural pest control work for which certified applicator's identification cards were applied before said cards are issued.

- (6) Upon receipt of the application for examination, the Committee secretary shall provide the necessary forms for the applicant to pre-register for the examination as required in Rule .0302(c), Paragraph (c) of this Rule.
- (7) Rule .0302 Subparagraphs (a)(2), (3), (5), (6), (7), (12) and (13) of this Section Rule shall also apply to all applicants for certified applicator's identification cards.
- (c) Pre-registration for license and certified applicator examination applicants:
  - (1) All applicants for the license and/or certified applicator's examination(s) shall pre-register with the Committee secretary for said examination(s) no less than ten days prior to the date of the examination.
  - (2) Applicants who fail to pre-register shall not be permitted to take the examination.
  - (3) Pre-registration shall include a properly completed application for examination.
- (d) Frequency of examination by license applicant limited:
  - (1) An applicant who initially fails to pass the license examination may retake the examination at any subsequent regularly scheduled examination.
  - (2) An applicant who fails to pass the second license examination shall wait a minimum of three months examinations between each subsequent examination: except that, in the event of a death of a licensee the applicant intending to succeed the deceased licensee may take the examination a third time prior to the first three month examination waiting period.

*Statutory Authority G.S. 106-65.29.*

**.0313 INFORMATION ON REGISTERED TECHNICIAN'S IDENTIFICATION CARDS**

- (a) A registered technician's identification card shall contain, but not be limited to, the following information:
  - (1) name of registrant;
  - (2) name of licensee or employer;
  - (3) name of licensee's company;
  - (4) address of licensee's company;
  - (5) license number and phase(s) of licensee;
  - (6) age, weight, height, color of hair and eyes of registrant;
  - (7) job classification of card holder;
  - (8) issuance date, expiration date and license year covered by card.
- (b) The registered technician's identification card and the license of the employer of the card

holder shall bear the same license number and license phase(s). Each registered technician's identification card shall bear only one license number, one company name, and not more than three license phases.

(c) A licensee or non-commercial certified applicator applying for the issuance or renewal of a registered technician's identification card for his employee shall certify to the Division that the employee has completed employee training approved by the Committee in structural pest control work.

(d) In the event the ~~committee~~ Committee approves employee training materials produced by the Division, such materials shall be purchased for each home office and by at least one non-commercial certified applicator at each business location at a cost determined by the ~~committee~~ Committee; provided, however, a licensee who is licensee performing work under the structural pest control license of another and non-commercial certified applicators who are not engaged in structural pest control shall not be required to purchase the training materials.

(e) Training materials shall be made available for inspection during regular business hours upon request by the Division.

*Statutory Authority G.S. 106-65.29.*

**.0318 CHANGE IN STATUS OF LICENSEE AND/OR CERTIFIED APPLICATOR**

(a) ~~When there is a change in the status of a licensee in relation to the company or branch office, the license number given to the original licensee of a company may be retained by that company or branch office, at the discretion of the Committee, and upon written request within ten days of such change.~~

(b) It shall be the responsibility of each licensee and certified applicator to inform the ~~committee~~ Committee secretary, in writing, on a form prescribed by the Division, and within 10 days, of any change in employment status, including but not limited to:

- (1) change from one employer to another,
- (2) change of business address,
- (3) change of company name,
- (4) change of telephone number,
- (5) sale of business,
- (6) discontinuance of business,
- (7) change of business location,
- (8) change of resident agent.

*Statutory Authority G.S. 106-65.29.*

**.0329 EXPIRATION OF LICENSES AND CARDS**



(a) Any licensee whose license expires and is subject to reexamination pursuant to G.S. 106-65.31(b) shall meet all the requirements for licensing prescribed in G.S. 106-65.26 and Rule .0302(a) and (c) of this Section.

(b) Any certified applicator whose certified applicator's identification card expires and is subject to reexamination pursuant to G.S. 106-65.31(a) shall meet all the requirements for certification prescribed in G.S. 106-65.26 and Rule .0302(b) and (c) of this Section.

*Statutory Authority G.S. 106-65.29.*

## SECTION .0400 - PUBLIC SAFETY

### .0406 SPILL CONTROL

Licensees and certified applicators shall maintain spill control materials and/or equipment at all locations used to store pesticides and on all service vehicles used to transport pesticides.

*Statutory Authority G.S. 106-65.29.*

## SECTION .0600 - WOOD-DESTROYING ORGANISMS AGREEMENTS

### .0601 AGREEMENTS

(a) Before any work treatment is started, the licensee or his authorized agent shall be responsible for executing execute, and furnish to the property owner or his authorized agent, a written agreement with, and proposal informing in detail, the property owner or his authorized agent, in detail, as to the type and quality of work that is to be performed. under the agreement. The written proposal shall contain that information specified in Rule .0605 of this Section and, upon written acceptance by the property owner or authorized agent, shall suffice as a written agreement.

(b) The licensee or his authorized agent shall, within 14 days of beginning a treatment, execute a written agreement with the property owner or his authorized agent in conformance with Rule .0605 of this Section. During the 14 day period, the Division will use the written proposal as its standard of enforcement. Following the 14 day period and in the absence of an executed written agreement, the Division will apply Rule .0503, .0505 or .0506 of this Chapter, as applicable, as its standard of enforcement.

*Statutory Authority G.S. 106-65.29.*

### .0602 WOOD-DESTROYING INSECT AND OTHER ORGANISM REPORTS

(a) ~~Between September 1, 1987 and January 31, 1988, any~~ Any written statement as to the presence or absence of wood-destroying insects or their damage in buildings or structures for sale shall be on either HUD Form No. 92053 or the WDIR 100. As of February 1, 1988, only WDIR 100 shall be accepted for use by the Committee. Incomplete An incomplete or inaccurate Wood-Destroying Insect Reports Information Report shall not be acceptable and the issuance of such reports a report is grounds for disciplinary action by the committee. Committee. No Wood-Destroying Insect Reports Information Report or Wood-Destroying Organism Reports Report shall be issued before an inspection of the building or structure is made. Each Wood-Destroying Insect Information Report issued by a licensee shall be kept in the files of said licensee and made available at the for inspection upon request of the enforcement agency, for inspection. Division.

(b) If during the inspection of a structure, a licensee or his authorized agent finds live subterranean termites or visible evidence of past or present infestation of subterranean termites (such as tubes, damage, cast wings, infested wood scraps or other cellulose materials, etc.) in the structure and there is no visible evidence that said structure has been treated for subterranean termites, the licensee shall treat said structure for subterranean termites prior to the issuance of a Wood-Destroying Insect Report on the structure which states that the structure is free from subterranean termites.

(c) A licensee, certified applicator or registered technician shall not remove or destroy any wood-destroying organism evidence discovered in, on, under or in or on debris under a structure inspected pursuant to this Rule except as required by Paragraph (b) of this Rule.

*Statutory Authority G.S. 106-65.29.*

### .0603 WAIVERS

(a) If there are any deviations or omissions from the minimum requirements for the control and/or prevention of wood-destroying organisms or pests, as hereinbefore set forth, each requirement omitted shall be fully explained, in writing, prior to any work being done, on the waiver form(s) prescribed by the Committee. bear the written approval of the property owner or his authorized agent, and shall be made a permanent part of the written agreement.

(b) The waiver must be prepared in accordance with Rule .0601 of this Section and, upon written acceptance by the property owner, shall become a permanent part of the written agreement.

(c) ~~(b)~~ Incomplete and retroactive waiver forms shall not be accepted unless approved by the Committee or its authorized agent.

*Statutory Authority G.S. 106-65.29.*

**.0604 WOOD-DESTROYING ORGANISMS RECORDS**

(a) A duplicate of each written proposal for the control of wood-destroying organisms and waiver (if applicable) shall be kept by the licensee for a minimum of six months from the date executed by the licensee or his authorized agent.

(b) ~~(a)~~ A duplicate of each written agreement and waiver (if applicable), ~~including wood-destroying insect reports or wood-destroying organism reports,~~ for the control and/or prevention of any wood-destroying organism shall be kept by the licensee for a minimum of two years beyond the expiration date of the written agreement. The duplicate of each written agreement shall contain, in addition to the information specified under Rule .0605(a) or Rule .0605(d) of this Section, the following:

- (1) EPA approved brand name of pesticide used; and
- (2) Information required by EPA.

(c) A duplicate of each wood-destroying insect or wood-destroying organism report shall be kept by the licensee for a minimum of two years beyond the date of issuance.

(d) ~~(b)~~ Non-commercial certified applicators shall maintain the following records for two years beyond the last date of treatment:

- (1) EPA approved brand name of all pesticides used;
- (2) Target pest;
- (3) Site of application;
- (4) Date of application; and
- (5) Information required by EPA.

*Statutory Authority G.S. 106-65.29.*

**.0605 CONTRACTUAL AGREEMENTS FOR WOOD-DESTROYING ORGANISMS**

(a) All agreements for the control and/or prevention of wood-destroying organisms in existing structures shall be in writing. ~~A copy of the written agreement and waiver (if applicable) pertaining to said treatment(s) shall be presented to and furnished the property owner or his authorized agent, for acceptance, and shall clearly set forth~~ and include the following:

- (1) Date property was inspected and full name of the inspector;
- (2) Exact location of property inspected and or treated;

- (3) Complete name and address of the property owner or his authorized agent;
- (4) Complete name and address of the licensee;
- (5) License number and phase(s) of the licensee and full name of company licensee represents;
- (6) Signature of licensee or his authorized agent;
- (7) For existing structures, the written agreement shall include a foundation diagram of the structure(s) or portions of such structure(s) inspected. The diagram shall clearly indicate and make full disclosure of the location of individual water sources, any visual evidence of wood-destroying organism infestation, whether it be active or inactive, and visibly damaged timbers;
- (8) The date upon which the written agreement is entered into and the period of time covered by the written agreement;
- (9) The written agreement must clearly indicate, by complete not abbreviated common name(s), the wood-destroying organism(s) to be controlled and/or prevented, and covered under the written agreement;
- (10) Whether or not reinspections are to be made and, if so, approximate time interval between, and renewal fees for same;
- (11) Conditions under which retreatments will be made;
- (12) Total price to be charged for treatment service, and for repairs or excavations, where such are to be performed;
- (13) The written agreement, waiver (if applicable) and Wood-Destroying Insect Report or Wood-Destroying Organism Report, shall not show or include the address and telephone number of any licensee's representative or employee other than the address and telephone number of those specified in Rule .0605 Subparagraphs (a)(3), (4), and (5) of this Section; Rule;
- (14) Any licensee or business entity advertising to be bonded shall advise each customer, in writing, in the proposal, whether or not the contract or written agreement will be covered by a bond of any type;
- (15) If the performance of the work is guaranteed by a bond, the obligation of the bond shall set forth specifically such items as necessary retreatments, timber replacements, etc., in wording identical to that in the bond itself;
- (16) Rule .0501(a) of ~~Section .0500~~ this Chapter shall also be followed.

(b) A structure or structures covered by a contract for wood-destroying organism(s) treatment shall not knowingly be placed under an additional contract for the same treatment while the first contract is still in effect.

(c) When periodic reinspections or retreatments are specified in written agreements for the control or prevention of wood-destroying organisms, the licensee shall issue to the property owner or his authorized agent, after each reinspection or retreatment, a signed report of each reinspection or retreatment showing the condition of the property with respect to the presence or absence of wood-destroying organisms. A record of such reinspections and retreatments shall be kept in the file of the licensee. Such reports shall be subject to inspection by the enforcement agency or committee.

(d) All agreements for the ~~treatment, or control and/or prevention of subterranean termites or other wood-destroying organism organisms~~ in buildings under construction shall be in writing. ~~A copy of the executed written agreement pertaining to said treatment(s) shall be presented to and furnished the property owner or his authorized agent, for acceptance,~~ and shall clearly set forth and include the following:

- (1) Date of final treatment and period of time covered by the written agreement;
- (2) Exact location of the treated property;
- (3) Complete name and address of the property owner or his authorized agent;
- (4) Complete name and address of the licensee;
- (5) License number and phase(s) of the licensee and full name of company licensee represents;
- (6) Signature of licensee or his authorized agent;
- (7) The written agreement must clearly indicate, by complete not abbreviated common name(s), the wood-destroying organism(s) to be controlled or prevented, and covered under the written agreement;
- (8) Whether or not reinspections are to be made and if so, approximate time interval between, and renewal fees, if any, for same;
- (9) Conditions under which retreatments will be made;
- (10) Total price to be charged for treatment service;
- (11) Any licensee or business entity advertising to be bonded shall advise each cus-

tomers, in writing, in the proposal, whether or not the contract or written agreement will be covered by a bond of any type;

- (12) If the performance of the work is guaranteed by a bond, the obligation of the bond shall set forth specifically such items as necessary retreatments, timber replacements, etc., in wording identical to that in the bond itself;
- (13) Rule .0604(a) of this Section shall also be followed.

(e) If the licensee provides preventive treatment(s) for subterranean termites to a structure(s) for someone such as a builder or construction company who is constructing the building(s) for someone else or with the purpose of offering the building(s) for sale, the licensee may enter into a single master agreement with the builder to provide the preventive treatment(s) for subterranean termites. This single master agreement shall include the following:

- (1) Complete name and address of the builder, or his authorized agent;
- (2) That information required in ~~Rules .0605~~ Subparagraphs (d)(4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of this ~~Section~~ Rule.
- (f) When a structure is treated under an agreement with a builder, the licensee shall:
  - (1) Following completion of the treatment, and upon notification by the builder or buyer, issue a written agreement to the initial buyer. The written agreement issued to the buyer shall include the following:
    - (A) Complete name and address of the builder, or his authorized agent as it appears on the builder's agreement;
    - (B) That information required in ~~Rules .0605~~ Subparagraphs (d)(1), (2), (3), (4), (5), (6), (7), (8), (9), and (11) of this ~~Section~~ Rule. The builder shall be issued a copy of any written agreement issued the buyer.
  - (2) Maintain a record of each treatment performed on each structure to include the following information:
    - (A) Exact location of the structure treated;
    - (B) Date each treatment was performed;
    - (C) The portion(s) of the structure treated.

Statutory Authority G.S. 106-65.29.

## SECTION .0900 - DUTIES AND RESPONSIBILITIES OF LICENSEE

### .0902 FINANCIAL RESPONSIBILITY

(a) Structural pest control licensees shall obtain and maintain financial responsibility by general liability insurance with operations in progress and completed operations included and minimum limits equal to or greater than the minimum limits outlined in Rule .0002 Paragraph (b) of this Section. Rule. Any licensee subcontracting work shall also obtain owner's and contractor's protective insurance.

(b) Minimum limits:

(1) Single limit:

Property Damage	\$100,000 Each Occurrence
Bodily Injury	\$300,000 Each Occurrence

(2) Combined limit:

\$400,000 Each Occurrence

(c) Each applicant for a license in any phase of structural pest control shall show evidence of his financial ability to properly indemnify persons suffering from the use or application of pesticides in the form of a Certificate of Insurance, completed by the insurance company with the licensee as the named insured and with the Division named as a certificate holder.

(d) The Certificate of Insurance shall clearly set forth the type of coverage, limits of liability, and any exclusions of the policy and shall have attached a copy of either endorsement GL 04 17 or CG 04 57 or other subsequent "Pesticide or Herbicide Applicator Coverage" endorsement approved by the North Carolina Department of Insurance which provides for pollution and contamination coverage, an endorsement which indicates that the policy provides coverage for any pollution and or contamination occurring as a result of the use or application of any pesticide by the name insured or any employee of the named insured.

(e) The license applicant shall be responsible for the submission of the Certificate of Insurance to the Division as specified in Rule .0002 Paragraphs (c) and (d) of this Section. Rule. No license shall be issued, re-issued, or renewed unless or until said Certificate of Insurance is received by the Division.

(f) The insurance policy(s) shall be with companies licensed, or otherwise approved to do business in North Carolina, by the NC Department of Insurance. The insurance policy shall be in full force and effect during the entire period covered by the license certificate. The license shall expire at expiration or upon reduction of the policies below minimum requirements or cancellation thereof. Such expired license shall only be reinstated upon satisfactory proof from the licensee that he has obtained the required financial responsibility coverage.

(g) The licensee shall give at least 10 days notice, by registered mail, to the Division as a condition precedent to the cancellation by the insurer, material change or cancellation by the insured; and, if such condition is not satisfied, any cancellation or attempted cancellation shall be null, void, and of no effect. In addition, the licensee shall give notice to the Division of any reduction in property damage or bodily injury coverage below the minimum limits. The insurance required by this Rule shall include the following cancellation or policy modification clause: "Cancellation or any material change in the policy adversely affecting the interest of the State of North Carolina in such insurance shall not be effective until 15 days after written notification thereof to the North Carolina Structural Pest Control Division." Evidence of compliance shall be included on any Certificate of Insurance.

(h) No structural pest control license shall be issued to any person where there exists an outstanding and unpaid final judgement against said person resulting from any civil suit arising out of damages suffered by a plaintiff as the result of a misuse of a pesticide by said person. Any current and valid structural pest control license shall become null and void 180 days following the imposition of a final judgment awarding damages to any plaintiff resulting from a civil suit arising out of losses suffered as the result of a pesticide misuse by the holder of said license unless the final judgment is settled in full within said 180 days.

(i) The Committee may accept other evidence of financial responsibility.

(j) Rule .0002 Paragraphs (a) through (i) of this Rule shall not apply to any individual holding an inactive license as defined by Rule .0102(29) of this Chapter.

*Statutory Authority G.S. 106-65.37.*

## SECTION .1000 - TIME FOR FILING COMPLAINTS

### .1001 TIME FOR FILING COMPLAINTS

(a) No disciplinary action against a licensee, employee of a licensee or certified applicator shall be commenced against a licensee, employee of a

licensee or certified applicator for a violation of Rule .0503, .0505 or .0506 of this Chapter after two years from the act or omission that occurred during the initial treatment or after the expiration of the structural pest control contract, whichever is the later, except that with respect to disciplinary action alleging a violation of G.S.

106-65.28(a)(4), the action shall be commenced within two years from the discovery by the Committee of the alleged facts constituting the fraud or misrepresentation. latter.

(b) Except as specified in Paragraph (a) of this Rule, no disciplinary action shall be commenced against a licensee, employee of a licensee or certified applicator after two years from the date of the discovery of the act or omission that constitutes a violation of these Rules or the Structural Pest Control Act.

*Statutory Authority G.S. 106-65.29.*

#### SECTION .1200 - ADMINISTRATIVE HEARINGS: CONTESTED CASES

##### .1201 NOTICE OF HEARING; ANSWER

(a) The contents and manner of service of notice of hearing in contested case shall be as prescribed in G.S. 150B-38(b) and (c).

(b) Any party who has been served with notice of hearing may file a written response as prescribed in G.S. 150B-38(d).

*Statutory Authority G.S. 106-65.29; 150B-38.*

##### .1202 RIGHT TO HEARING

(a) Contested Cases. Disciplinary proceedings to enforce the provisions of the North Carolina Structural Pest Control Law and 2 NCAC 34 are deemed to be "contested cases" within the meaning of G.S. 150B-2, and any person subject to such proceedings shall be given notice and the opportunity to be heard.

(b) Summary Suspension. Nothing within Paragraph (a) of this Rule shall abridge the right of the Committee to summarily suspend a license, a certified applicator's card or a registered technician's identification card prior to hearing pursuant to G.S. 150B-3(c).

*Statutory Authority G.S. 106-65.29; 150B-38.*

##### .1203 LOCATION OF HEARING

The location of the hearing in a contested case shall be as prescribed in G.S. 150B-38(c).

*Statutory Authority G.S. 106-65.29; 150B-38.*

##### .1204 DISCOVERY; INVENTION; SUBPOENAS

(a) Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 14-1.

(b) The intervention of persons not initially parties to a contested case is governed by G.S. 150B-38(f). Petitions or motions to intervene must be in writing. The Committee shall

promptly determine whether to grant or deny intervention and shall so notify the petitioner and all parties in writing.

(c) The authority of the Committee to issue or revoke subpoenas in preparation for, or in the conduct of, contested cases is governed by G.S. 150B-39. If a subpoena is issued at the request of a party and not on the Committee's own motion, that party shall bear the cost of service.

*Statutory Authority G.S. 106-65.29; 150B-38.*

#### .1205 CONDUCT OF HEARING

(a) Hearings in contested cases shall be conducted by a majority of the Committee. The Chairman shall serve as presiding officer unless he is absent or disqualified, in which case the Vice-chairman shall preside. Hearings shall be conducted as prescribed by G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Committee member, if filed in good faith and in a timely manner, will be ruled on by the remaining members of the Committee. An affidavit is considered timely if it is filed:

(1) Prior to the hearing; or

(2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Committee member should be disqualified.

(c) Evidence. The admission of evidence in a hearing on a contested case shall be as prescribed in G.S. 150B-41.

*Statutory Authority G.S. 106-65.29; 150B-38.*

#### .1206 DECISION OF BOARD

(a) The form and content of the Committee's decision in a contested case shall be prescribed by G.S. 150B-42(a), and its decision shall be served upon the parties in a manner consistent with said statute.

(b) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).

*Statutory Authority G.S. 106-65.29; 150B-38.*

#### TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Dept. of Economic & Community Development, Division of Community Assistance intends to amend rule(s) cited as 4 NCAC 19L .0103, .0401, .0403, .0404, .0407,*

.0904, .1202, .1301 and to repeal rule(s) cited as 4 NCAC 19L .0701-.0702 and .0705.

*The proposed effective date of this action is May 1, 1992.*

*Instructions on how to demand a public hearing: Written requests for a Public Hearing must be received by February 17, 1992. Written requests should be sent to Bob Chandler, Director, Division of Community Assistance, 1307 Glenwood Avenue, Raleigh, NC 27605.*

*Reason for Proposed Action: This proposed action is necessary to enable the Division of Community Assistance to facilitate the implementation of the Community Development Block Grant Program in aid of which the Rules were adopted.*

*Comment Procedures: Oral or written comments will be accepted until March 3, 1992. Written comments should be sent to Bob Chandler, Director, Division of Community Assistance, 1307 Glenwood Avenue, Raleigh, NC 27605. Oral comments should be directed to Gail Brock (919) 733-2850.*

## CHAPTER 19 - DIVISION OF COMMUNITY ASSISTANCE

### SUBCHAPTER 19L - NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

#### SECTION .0100 - GENERAL PROVISIONS

##### .0103 DEFINITIONS

(a) "Act" means Title I of the Housing and Community Development Act of 1974, P. L. 93-383, as amended.

(b) "Applicant" means a local government which makes application pursuant to the provisions of this Subchapter.

(c) "CDBG" means the State-administered Community Development Block Grant Program.

(d) "Chief Elected Official" of a local government means either the elected mayor of a city or the chairman of a county board of commissioners.

(e) "Community Development Program" means the annual program of projects and activities to be carried out by the applicant with funds provided under this Subchapter and other resources.

(f) "HUD" means the U.S. Department of Housing and Urban Development.

(g) "Local Government" means any unit of general city or county government in the State.

(h) Low-income families are those with a family income of 50 percent or less of median-family income. Moderate-income families are those with a family income greater than 50 percent and less than or equal to 80 percent of median-family income. For purposes of such terms, the area involved and median income shall be determined in the same manner as provided for under the Act.

(i) "Low- and Moderate-Income Persons" means members of families whose incomes are within the income limits of low- and moderate-income families as defined in Paragraph (h) of this Rule.

(j) "Metropolitan Area" means a standard metropolitan statistical area, as established by the U.S. Office of Management and Budget.

(k) "Metropolitan City" means a city as defined by Section 102(a)(4) of the Act.

(l) "Department" means the North Carolina Department of Economic and Community Development.

(m) "Project" means one or more activities addressing either:

- (1) community revitalization needs, or
- (2) economic development needs, or
- ~~(3) development planning needs, or~~
- ~~(4) (3) development of new and innovative approaches to affordable housing for persons of low- and moderate-income, or~~
- ~~(5) (4) urgent needs of the applicant.~~

(n) "Recipient" means a local government that has been awarded a Community Development Block Grant and executed a Grant Agreement with the Department.

(o) "Secretary" means the Secretary of Department of Economic and Community Development or his designee.

(p) "State" means the State of North Carolina.

(q) "Urban County" means a county as defined by Section 102(a)(6) of the Act.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

#### SECTION .0400 - DISTRIBUTION OF FUNDS

##### .0401 GENERAL

(a) The Department shall designate specific dates for submission of grant applications under each category except for Urgent Needs. Urgent Needs applications may be submitted at any time, but other grant application submission dates will be announced by the Department at least 45 days before the date applications are due.

(b) In cases where the Department makes a procedural error in the application selection process that, when corrected, would result in awarding a score sufficient to warrant a grant award, the Department may compensate that applicant with a grant in the next funding cycle.

(c) Applicants can apply for funding under the grant categories of Community Revitalization, Economic Development, ~~Development Planning~~, Housing Development, Interim Assistance, Urgent Needs, and Community Investment for Economic Opportunity. Applicants shall not apply for Contingency funding. Contingency awards will be made to eligible applicants in Community Revitalization, Economic Development, and Housing Development ~~and Development Planning~~ categories.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

#### **.0403 SIZE AND USE OF GRANTS MADE TO RECIPIENTS**

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards made to any one recipient shall not exceed the following amount in each grant category: Community Revitalization - ~~six hundred thousand dollars (\$600,000);~~ one million dollars (\$1,000,000); Economic Development - ~~six hundred thousand dollars (\$600,000);~~ Development Planning - five thousand dollars (\$5,000); Housing Development - two hundred fifty thousand dollars (\$250,000) or funds available; Urgent Needs - ~~seven hundred fifty thousand dollars (\$750,000);~~ six hundred thousand dollars (\$600,000); Interim Assistance - seven hundred fifty thousand dollars (\$750,000) for projects designated to be completed within 36 months from the award date, and four million dollars (\$4,000,000) for projects designated to be completed within 18 months from the award date; Contingency - six hundred thousand dollars (\$600,000); and Community Investment for Economic Opportunity - seventy-five thousand dollars (\$75,000). Applicants shall not have a project or combination of projects, under active consideration for funding which exceeds ~~seven hundred fifty thousand dollars (\$750,000)~~ one million three hundred thousand dollars (\$1,300,000), except for Interim Assistance and Urgent Needs projects.

(b) No local government may receive more than a total of ~~seven hundred fifty thousand dollars (\$750,000)~~ one million three hundred thousand dollars (\$1,300,000) in CDBG funds in the period that the state distributes its annual HUD allocation of CDBG funds; except that local

governments may also receive up to ~~seven hundred fifty thousand dollars (\$750,000)~~ six hundred thousand dollars (\$600,000) for a project that addresses Urgent Needs and up to four million dollars (\$4,000,000,) in Interim Assistance funds in addition to other grants awarded during the same time period.

(c) Community Revitalization applicants may spend no more than 15 percent of their total grant amount to finance local option activities. Local option activities are eligible activities which do not need to be directly related to proposed projects; however, job creation activities are not eligible local option activities. Local option activities will not be competitively rated by the Department, but may be limited to activities specified by the Department in application guidelines and instructions; ~~however,~~ each local option project must show that:

- (1) At least fifty-one percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

(d) ~~Except for Development Planning projects,~~ Applicants may budget and expend no more than 18 percent of the sum of funds requested and program income for administration and planning activities for each project. The Department may review grant requests to determine the reasonableness and appropriateness of all proposed administrative and planning costs. Notwithstanding Rule .0910 of this Subchapter, grantees may not increase their approved planning and administrative budgets without prior Departmental approval.

(e) Applicants may spend CDBG funds in those areas in which the applicant has the legal authority to undertake project activities.

(f) Grants to specific recipients will be provided in amounts commensurate with the size of the applicant's program. In determining appropriate grant amounts for each applicant, the Department may consider an applicant's need, proposed activities, all proposed administrative and planning costs, and ability to carry out the proposed activities.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

#### **.0404 GRANT CATEGORY ALLOCATION**

(a) Each program year funds will be reserved for each grant category. Funds awarded to local



governments will be reserved for each grant category as follows: Up to five percent of the grant will be awarded for Housing Development and Development Planning grants. ~~of which a maximum of sixty thousand dollars (\$60,000) may be awarded for Development Planning grants.~~ In addition, up to five percent will be set aside for Urgent Needs grants and Contingency awards and up to twenty percent will be set aside for Economic Development grants each year. The remaining funds will be distributed by the Division of Community Assistance to Community Revitalization grant applications.

(b) Awards will be made for Interim Assistance from funds available in the state's allocation in accordance with Rule .1504 of this Subchapter.

(c) Up to one million dollars (\$1,000,000) of funds that are ~~recapture~~ recaptured from previous CDBG grants by the state ~~shall~~ may be used to make additional grants in the Housing Development category.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 24 C.F.R. 570.491.*

#### **.0407 GENERAL APPLICATION REQUIREMENTS**

(a) Local governments are required to submit applications in a manner prescribed by the Department in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application; thus applications must contain sufficient information for the Department to rate them against the selection criteria. All applicants are required to address their projects to one of the following grant categories: Community Revitalization, Economic Development, ~~Development Planning~~, Housing Development, Interim Assistance, Urgent Needs, or Community Investment for Economic Opportunity. Applicants may apply in more than one grant category, apply for several projects in the same grant category, and have more than one project approved, providing the total grant application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in detail.

(b) Applications must be received by Departmental administrative offices in Raleigh before 5:00 p.m. on the submission date or sent by mail and postmarked on the submission date.

(c) Applicants must provide citizens with adequate opportunity for meaningful involvement in the development of Community Development Block Grant applications. The applicant shall provide adequate information to citizens and

hold a public hearing at the initial stage of the planning process. Prior to the submission of the application the applicant must hold a second public hearing. Specific citizen participation guidelines are described further in Rule .1002 of this Subchapter. If the Department is aware of an applicant's failure to meet these citizen participation requirements, the Department may not rate the application.

(d) The Department may submit all CDBG applications and environmental review records as required by the National Environmental Policy Act and the State Environmental Policy Act to the State Clearinghouse of the Department of Administration for review and comments. The Department may require each applicant to submit a written description of how the applicant proposes to address each comment received from the State Clearinghouse.

(e) The applicant shall certify to the Department that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders. Copies of these federal and state requirements are available for public inspection from the Division of Community Assistance.

(f) Applicants must comply with the Housing and Community Development Act of 1974 as amended, all applicable federal and state laws, regulations, rules, Executive Orders and guidelines issued by the Department.

(g) Application requirements described in this Rule .0407 do not apply to Urgent Needs grants, except for Paragraphs (a), (d), (f) and (g).

(h) Applications submitted for Economic Development projects under Section .1400 of this Subchapter may be rated or funded for up to 90 days from the date of original submission. In addition, for applications that met the requirements of .0407(c) and .1002 of this Subchapter at the time of original application submission and in which the original project has not been changed significantly, there shall be no additional public hearing requirements during the 90 days. The Department shall determine whether significant changes have been made in a proposed project.

(i) Applications for CDBG assistance under the Economic Development category must be submitted with adequate evidence that both public hearings were held in accordance with Rule .1002(b) of this Subchapter.

*Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304(a); 24 C.F.R. 570.489.*

#### **SECTION .0700 - DEVELOPMENT PLANNING PROJECTS**



.0701 DEFINITION

Development Planning grants are provided to assist local governments to develop appropriate and competitive CDBG strategies. Development Planning grants shall be used only to support those administrative and planning activities that will result in projects that are eligible for CDBG funding in the future.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.0702 ELIGIBILITY REQUIREMENTS

(a) Applications for Development Planning funds must show that a project developed and funded in the future as a result of a Development Planning grant will primarily benefit low- and moderate-income persons. Applicants that do not meet this requirement will not be rated or funded.

(b) Applicants shall have the capacity to administer a Community Development Block Grant program. The Department may examine the following areas to determine performance:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs; and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and accomplishments in previously funded Community Development Block Grant programs.

Applicants that show a lack of capacity will not be rated or funded.

(c) Applicants must certify to the Department that development planning funds received will result in a future CDBG application submitted within 30 months of the date of the development planning award. Upon completion of a development planning project, the Department may determine that a resulting CDBG application is not feasible or appropriate. In such case, the Department may waive the requirement for an application in the first sentence of this Section.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.0705 SELECTION CRITERIA

Development Planning projects will be evaluated against other Development Planning project proposals. Applications will be evaluated and rated based on the project design. Three measures will be considered in evaluating project design for a maximum score of 400:

- (1) local commitment and capacity;
- (2) development feasibility; and
- (3) degree to which the project treats severe community development needs that have not previously been addressed.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304(a)(1); 24 C.F.R. 570.489.

SECTION .0900 GRANT ADMINISTRATION

.0904 ESCROW ACCOUNTS

Recipients may draw down CDBG funds and deposit them into an escrow account for private property rehabilitation in order to encourage the participation of small and minority owned contracting firms. Recipients shall meet the requirements of HUD implementing regulations contained in 24 C.F.R. 570. Escrow accounts may be established when direct grants or loans are made to owners of private property for the purpose of property rehabilitation. Cash withdrawals for this purpose must be made under the following terms:

- (1) The recipient must execute a written grant or loan agreement with the owner of the private property scheduled for rehabilitation.
- (2) Recipients shall comply with Chapter 36A of the General Statutes of North Carolina, entitled Trusts and Trustees. Under this Chapter recipients are, among other things, expressly prohibited from making loans from an escrow account to another account.
- (3) The timing and amount of a drawdown for deposit into an escrow account with respect to any loan or grant shall be subject to the following limitations:
  - (a) Cash disbursements to an escrow account must meet the timing requirements set forth in Paragraph (a) of Rule .0903.
  - (b) The deposit shall not be made unless a construction contract has been executed by the contractor selected to do the rehabilitation work, and all work and disbursements in payment of the contract are scheduled to be completed within 18 months or less from the date of the deposit.
  - (c) The deposit shall not be made if it would result in an amount in the escrow account in excess of disbursement needs for up to 6 months from the date of the deposit.
  - (d) The drawdown of CDBG funds for deposit into an escrow account shall not exceed the CDBG funded portion of the construction costs in the rehabilitation contract, and shall not include amounts for contingencies or administration.

- (4) Such escrow accounts may also include supplemental funds needed to complete the rehabilitation work such as commitments from a recognized lending institution, or a grant or loan from other Federal, State, or local rehabilitation programs as well as cash provided by the borrower. The escrow account shall be separate and distinct from all other accounts maintained by the block grant recipient, and be for the sole purpose of depositing rehabilitation loan or grant funds plus any such supplemental funds.
- (5) Escrow accounts may be established on an individual or master account basis. A master account shall provide for adequate accounting of each owner's equity.
- (6) Interest income on the deposit which is not to be applied to payment of the contractor or credited to the borrower of a rehabilitation loan under the terms of the loan or grant agreement with the property owner, shall be treated as program income of the block grant recipient.

Authority G.S. 143-323; 143B-10; 159-7 through 159-38; 24 C.F.R. 570.494; 24 C.F.R. 570.496; 42 U.S.C.A. 5304(b),(d),(e).

#### SECTION .1200 - CONTINGENCY PROJECTS

##### .1202 ELIGIBILITY REQUIREMENTS

Applicants must meet the respective eligibility requirements (described in either Rule .0502, .0602, .0702, .1302, or .1402) that relate to the type of project proposed by the applicant.

Authority G. S. 143-323; 143B-10; 24 C.F.R. 570.489; 24 C.F.R. 570.496.

#### SECTION .1300 - HOUSING DEVELOPMENT PROJECTS

##### .1301 DEFINITION

Grants under this category will demonstrate new and innovative approaches to housing problems of develop affordable housing opportunities for low- and moderate-income persons.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.

#### TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission Division of Facility Services intends to amend rule(s) cited as 10 NCAC 3J .2801,

.3401, .3403, .3416 and .3418; 10 NCAC 411 .0304, .0408, and .0410; adopt rule(s) cited as 10 NCAC 411 .0411; repeal rule(s) cited as 10 NCAC 3J .3405.

The proposed effective date of this action is June 1, 1992.

The public hearing will be conducted at 10:00 a.m. on March 4, 1992 at the Disability Determination Building, Room 1, 322 Chapanoke Road, Raleigh, NC.

#### Reason for Proposed Action:

Rules in 10 NCAC 3J .2801, .3401, .3403, .3405, .3416 and .3418 - To repeal an unnecessary rule and amend others to reflect changes presented to the Jail Standards Task Force.

Rule 10 NCAC 411 .0304 - The amendment to this rule removes a restriction on the sharing of information when law enforcement agencies cooperate with departments of social services in the conduct of child protective services investigations. The amendment to the rule makes it consistent with current legislation.

Rules 10 NCAC 411 .0408, .0410 and .0411 - These rules are being proposed for amendment and adoption to strengthen the initiative regarding community child protection teams mandated by Executive Order #142. The rules clarify expectations for record keeping and confidentiality which have been identified as problematic since the formation of the teams. The rule on minutes sets forth the requirement that teams comply with G.S. 132-1-9, Open Meetings.

**Comment Procedures:** Comments may be presented in writing any time before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of this rule by calling or writing to Donna Creech, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27611, 919/733-3055.

**Fiscal Note:** Rules 10 NCAC 3J .2801, .3401, .3403, .3405, .3416 and .3418 affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on January 8, 1992, OSBM on January 8, 1992, N.C. League of Municipalities on January 8, 1992, and N.C. Association of County Commissioners on January 8, 1992.

#### CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3J - THE OPERATION OF  
LOCAL CONFINEMENT FACILITIES

SECTION .2800 - SUPERVISION

.2801 SUPERVISION

(a) Officers shall make supervision rounds and directly observe each inmate in person at least twice per hour on an irregular basis. The supervision rounds shall be documented. If remote electronic monitoring is used to supplement supervision, it shall not be substituted for supervision rounds and direct visual observation.

~~(b) Officers shall maintain voice or visual contact with all inmates at all times, and it shall be through either direct observation or by means of electronic surveillance. In addition to the supervision rounds required in Paragraphs (a) and (c) of this Rule, each jail shall utilize one or both of the following methods of supervision:~~

~~(1) Direct or remote two-way voice communication with all confinement units.~~

~~(2) Visual contact either through direct observation or by means of electronic surveillance with all confinement units.~~

(c) There shall be more frequent observation of inmates who are assaultive, suicidal, intoxicated, mentally ill or who have other special needs or problems.

(d) Officers shall remain awake at all times.

(e) Officers shall not be assigned other duties that would interfere with the continuous supervision, custody or control of inmates.

(f) Female officers shall be on duty when female inmates are confined.

(g) The sheriff or the administrator of the regional jail shall develop a contingency plan for the supervision and control of inmates during an emergency, and that plan shall provide for the ready availability of extra personnel.

(h) Inmates shall not be allowed to supervise or assume any control over other inmates.

*Statutory Authority G.S. 153A-221.*

SECTION .3400 - STANDARDS FOR NEW JAIL  
DESIGN AND CONSTRUCTION

.3401 APPLICABILITY - CONSTRUCTION

(a) North Carolina State Building Code - Jails must meet the requirements of the North Carolina State Building Code in effect at the time of construction, additions, alterations or repairs.

(b) New Jails - The construction standards established in Section .3400 shall apply to all jail construction for which the final working drawings have been approved by the Branch after the effective date of this Rule. The operational

standards in Sections .2300 through .3200 of this Subchapter will affect design options and shall be reviewed prior to submittal of working drawings.

(c) Existing Jails - Existing jails shall continue to be governed by the existing construction standards which are now in Section .3700 and the same standards shall apply to new jails which have had final working drawings approved by the Branch prior to the effective date of this Rule. Existing jails or new jails which have had final working drawings approved by the Branch prior to the effective date of this Rule may choose to comply with any of the new construction standards in Section .3400 as a substitute for existing standards on the same subject in Section .3700.

(d) Additions - The construction standards established in Section .3400 shall apply to any construction that adds square footage to the building and for which the final working drawings are approved after the effective date of this Rule.

(e) Alterations or Repairs - When alterations or repairs are made to an existing jail building which affect its structural strength, exits, fire hazards, electrical systems, mechanical systems, or sanitary conditions, such alterations or repairs shall comply with the standards for new construction established in Section .3400. Unaltered portions of the building shall be required to comply with the new construction standards indicated in Section .3400 only under the circumstances specified in Paragraphs (f)-(h) of this Rule.

(f) Extensive Annual Alterations or Repairs - If, within any 12 month period, alterations or repairs costing in excess of 50 percent of the then physical value of the building are made to an existing jail, the entire jail shall conform to the construction standards for new jails established in Section .3400.

(g) Reconstruction After Damage - If an existing jail is damaged by fire or otherwise in excess of 50 percent of the then physical value of the building at the time of damage, the jail shall be reconstructed in conformance with the construction standards for new jails established in Section .3400.

(h) Physical Value - For the purpose of this Rule, the physical value of the jail building shall be determined by the local building inspection department.

*Statutory Authority G.S. 153A-221.*

.3403 COMPLIANCE REVIEW AND  
APPROVAL

(a) The governing body shall submit copies of the following to the Branch before it begins construction of a new jail and before it makes additions or alterations to an existing jail as defined by the North Carolina State Building Code:

- (1) three sets of schematic drawings and outline specifications;
- (2) three sets of preliminary working drawings or design development drawings and outline specifications; and
- (3) three sets of completed final working drawings and specifications.

(b) Upon receipt of the drawings and specifications at each stage, the Branch shall send one set each to the following for their review and approval: the Department of Insurance to insure compliance with the North Carolina State Building Code, and the Division of Environmental Health in the Department of Environment, Health, and Natural Resources to insure compliance with the rules governing sanitation as codified in 40 N.C.A.C. 40A, Section .0100 15A NCAC 18A, Section .1500 and which are hereby adopted incorporated by reference pursuant to G.S. 150B-14(e), including subsequent amendments and editions of the referenced materials. A copy of this material can be obtained free of charge from the State Division of Health Services, Environmental Health Section, Post Office Box 27687, Raleigh, North Carolina 27611-7687. The Branch shall keep one set for its own review and approval to insure compliance with the minimum standards for the operation and construction of jails as contained in this Subchapter. Review and comment on the drawings and specifications at each stage shall be made no later than 30 days after their receipt by the Branch.

*Statutory Authority G.S. 153A-221.*

#### .3405 CENTRAL CONTROL STATION

In jails that have a central control station, the station shall:

- (1) be strategically located and equipped to regulate and monitor the movement of inmates and officers;
- (2) have a security vestibule at its entrance;
- (3) have direct two-way voice communication with all confinement units;
- (4) have direct two-way voice communication with all officers as needed to maintain safety and security;
- (5) be equipped with a release mechanism to open all confinement unit doors in an emergency;
- (6) have a toilet and sink.

*Statutory Authority G.S. 153A-221.*

#### .3416 SAFETY EQUIPMENT

In each jail the safety equipment, including intercoms, fire extinguishers, smoke detectors, and sprinkler heads, shall be tamper-resistant if necessary for security. Two-way voice communications shall comply with Rule .2801 of this Subchapter.

*Statutory Authority G.S. 153A-221.*

#### .3418 PLUMBING SYSTEMS

(a) Each jail shall have a plumbing system that complies with the Commission for Health Services Rule 40 N.C.A.C. 40A Rules 15A NCAC 18A, Section .1500 and the North Carolina State Plumbing Code, both of which are hereby adopted incorporated by reference pursuant to G.S. 150B-14(e), including subsequent amendments and editions of the referenced materials. A copy of 15A NCAC 18A, Section .1500 can be obtained free of charge from the state Division of Health Services, Environmental Health Section, Post Office Box 27687, Raleigh, North Carolina 27611-7687. A copy of the North Carolina State Plumbing Code (Volume II of the North Carolina State Building Code) can be obtained for twenty dollars (\$20.00) from the North Carolina Department of Insurance, Post Office Box 26387, Raleigh, North Carolina 27611.

(b) Each jail shall have a hot water supply for lavatories and showers designed to meet the usual needs of the number of inmates confined in the jail.

(c) The master control valves for the plumbing system shall be located outside the confinement units and shall be accessible to officers during an emergency.

*Statutory Authority G.S. 153A-221.*

### CHAPTER 41 - CHILDREN'S SERVICES

#### SUBCHAPTER 41I - PROTECTIVE SERVICES

##### SECTION .0300 - CHILD PROTECTIVE SERVICES: GENERAL

#### .0304 RECEIVING INFO: INITIATING PROMPT INVESTIGATIONS OF REPORTS

(a) The county director shall receive and initiate an investigation on all reports of suspected child abuse or neglect, including anonymous reports.

(b) The county director shall make a diligent effort to obtain the following information from the person making the report:

- (1) the name and address of the parent, guardian or caretaker and the name of the alleged perpetrator;
- (2) the name and actual or approximate age of the child;
- (3) the nature and extent of the alleged neglect or abuse;
- (4) the present whereabouts of the child if not at the home address;
- (5) other information that the reporter has which might be helpful in establishing the need for protective services;
- (6) the name and address of the individual making the report.

(c) When a county director receives a report on suspected abuse and decides that a law enforcement agency should be notified, the county director shall provide the law enforcement agency with the information obtained from the person making the report as outlined in (b) of this Rule. ~~except the name and address of the individual making the report.~~

(d) The county director shall promptly initiate an investigation of suspected abuse or neglect and in all cases shall initiate an investigation of suspected abuse within 24 hours after receiving a report and shall initiate an investigation of suspected neglect within 72 hours after receiving a report.

(e) The investigation shall include a visit with the child and to the place where the child resides.

(f) When abuse or neglect is alleged to have occurred in an institution, in addition to obtaining information as described in (b) of this Rule, the county director shall initiate the investigation by contacting the individual who is administratively responsible for on-site operation of the institution and solicit the cooperation of the administration of the institution.

(g) The county director must have an internal two level review, including at a minimum the worker and the worker's supervisor, prior to making a decision that information received does not constitute a report of abuse or neglect.

(h) The county director must establish a process by which the person providing this information may obtain a review of the agency's decision not to accept the information as a report of abuse or neglect. The process shall include:

- (1) informing the person providing the information that the agency will not conduct an investigation, the basis for that decision, and their right to and the procedures for obtaining such a review; and
- (2) designating the persons by whom and the manner in which such reviews will be conducted.

*Statutory Authority G.S. 7A-543; 7A-544; 143B-153.*

#### SECTION .0400 - COMMUNITY CHILD PROTECTION TEAMS

##### .0408 RECORDS

~~(a) No community child protection team member will retain or maintain any records pertaining to individual clients.~~

(b) (a) The county director shall maintain lists of participants for each team meeting and confidentiality statements signed by the team members and any invited participants. Such records will be maintained according to the standard administrative record retention schedule.

(c) (b) Cases receiving child protective services at the time of review shall have an entry in the child's protective services record to indicate that the case was reviewed by the team. Additional entry in the record shall be at the discretion of the Director of Social Services.

*Statutory Authority G.S. 7A-544; 7A-675; 132-1; 132-3; 143B-153.*

##### .0410 CONFIDENTIALITY

(a) The county director is authorized to share with the community child protection team any information available to him that is needed by the team in the execution of their duties as defined by Rule .0402 of this Section.

(b) Each team member and invited participant shall sign a statement indicating their understanding of and adherence to confidentiality requirements including the possible civil or criminal consequences of any breach of confidentiality. Rules regarding confidentiality shall apply to any personal files that are created or maintained by any team member or invited participant. This does not preclude any agency representative from sharing with his agency, on a need to know basis, information acquired at a community child protection team meeting regarding a current client or referred case.

(c) Members of the team who have access to client information and fail to comply with the rules in this Section shall be denied access to confidential information and subject to dismissal from the team.

(d) Any invited participant who is given access to client information during the team review and fails to comply with the rules in this Section shall be denied future participation in team reviews.

(e) The county director shall not share any information which discloses the identity of individuals who have reported suspected abuse or

neglect to the county department of social services.

Statutory Authority G.S. 7A-544; 7A-675; 108A-80; 143B-153.

#### .0411 MINUTES

(a) Every community child protection team shall keep minutes of all official meetings, excluding executive sessions, in compliance with the open meetings law. These minutes shall be permanent public records and shall be maintained according to the standard administrative record retention schedule.

(b) Information regarding individual clients shall be discussed in executive session. Any minutes generated from any executive session shall be sealed from public inspection.

Statutory Authority G.S. 132-1; 132-3; 132-6; 132-9; 143-318.9-12.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission (Division of Facility Services) intends to adopt rules cited as 10 NCAC 3L .0901 - .0907, .1001 - .1007, .1101 - .1111, .1201 - .1202, .1301 - .1303, .1401 - .1402 and repeal rules cited as 10 NCAC 3L .0111 - .0116, .0205 - .0210, .0305 - .0314, .0418 - .0421, .0504 - .0506, .0604 - .0605.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 9:30 a.m. on March 13, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.*

*Reason for Proposed Action: To adopt rules for licensure of home care agencies to become effective July 1, 1992 pursuant to House Bill 168. Repeal of the Home Health rules is necessary because new home care licensure rules will cover home health agencies (refer to House Bill 168).*

*Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603 by March 12, 1992. Oral comments may be given at the hearing.*

#### CHAPTER 3 - FACILITY SERVICES

### SUBCHAPTER 3L - THE LICENSING OF HOME CARE AGENCIES

#### SECTION .0100 - GENERAL

##### .0111 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Agency director" means the person having administrative responsibility for the operation of the home health agency.
- (2) "Care plan" means the proposed method developed in writing by which the agency staff plans to provide patient care services.
- (3) "Department" means the North Carolina Department of Human Resources.
- (4) "Governing body" means the person or group of persons having full legal authority and ownership responsibility for the operation of the home health agency.
- (5) "Home health aide" means an individual who renders assistance to patients for personal care and other duties as specified in the care plan.
- (6) "Licensed practical nurse" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (7) "Occupational therapist" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (8) "Physical therapist" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (9) "Physician" means a person licensed as such, holding a current license as required by North Carolina statute.
- (10) "Plan of treatment" means the written orders of a physician for the home care of the physician's patient developed in consultation with agency staff.
- (11) "Public agency" means any governmental unit including but not limited to: the federal government, the state, any subdivisions of the state, counties, or municipalities.
- (12) "Registered nurse" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (13) "Social worker" means a person with a masters degree from a school of social work approved by the Council on Social Work Education who is eligible for certification by the North Carolina Certification Board for Social Work as a Certified Master Social Worker.
- (14) "Speech pathologist" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (15) "Speech therapy" means professional services provided by a speech pathologist.

*Statutory Authority G.S. 131E-136(2); 131E-140.*

**.0112 LICENSE**

Home health agencies shall be licensed in accordance with G.S. 131E-138. Public agencies and county and district health departments shall be exempt from licensure and licensure rules in accordance with the provisions of G.S. 131E-136(2).

*Statutory Authority G.S. 131E-140.*

**.0113 APPLICATION FOR AND ISSUANCE OF LICENSE**

(a) An application for the operation of a home health agency shall be submitted to the department prior to a license being issued.

(b) The application shall include:

(1) the name and address of each person having an ownership interest (directly or indirectly) of 5 percent or more of the home health agency;

(2) the name and address of each officer and director of the corporation if the home health agency is organized as a corporation; and

(3) the name and address of each partner if the home health agency is organized as a partnership.

(c) No new applicant shall be issued a license until representatives of the department have conducted an inspection of the home health agency for determination of compliance with the rules contained in this Subchapter.

(d) The department shall issue a license to each home health agency annually. Each license shall expire at midnight on the expiration date on the license and is renewable upon application.

(e) The license shall be posted in a prominent location accessible to public view within the premises.

(f) The license shall be issued for the premises and persons named in the application and shall not be transferable. All names and street addresses under which the agency operates shall appear on the license.

(g) Prior to change of ownership or the establishment of a new home health agency, all certificate of need requirements must be satisfied.

*Statutory Authority G.S. 131E-140.*

**.0114 INSPECTIONS**

(a) Any home health agency licensed by the department shall be subject to proper inspections by an authorized representative of the depart-

ment at any time as a condition of holding such license.

(b) Any organization subject to licensure which presents itself to the public as a home health agency, which does not hold a license, and is or may be in violation of 10 NCAC 3E .0112 and G.S. 131E-138 shall be subject to proper inspections at any time by authorized representatives of the department.

(c) Any authorized representative of the department shall make his identity known to the person in charge prior to inspection.

(d) Inspection of medical records shall be carried out in accordance with G.S. 131E-141(b).

(e) An inspection shall be considered proper whenever the purpose of the inspection is to determine whether the agency complies with the provisions of this Subchapter or whenever there is reason to believe that some condition exists which is not in accord with accepted public health standards and practices.

*Statutory Authority G.S. 131E-140.*

**.0115 COMPLIANCE WITH LAWS**

(a) The home health agency shall be in compliance with all applicable state and local laws, rules and regulations.

(b) Staff of the home health agency shall be currently licensed or registered in accordance with applicable laws of the State of North Carolina.

*Statutory Authority G.S. 131E-140.*

**.0116 ADVERSE ACTION**

The department may deny, suspend, revoke, recall or amend a license in accordance with G.S. 131E-139 for any home health agency which significantly fails to comply with the rules contained in this Subchapter or which fails to implement an approved plan of correction for deficiencies cited by the department. A home health agency may appeal any adverse decision made by the department concerning its license by making such appeal in accordance with the Administrative Procedure Act, G.S. 150A and departmental rules 10 NCAC 1B .0200 et seq. As provided for in G.S. 131E-142, the department may seek injunctive relief to prevent a private agency from establishing or operating a home health agency without a license.

*Statutory Authority G.S. 131E-140.*

**SECTION .0200 - ADMINISTRATION**

**.0205 AGENCY MANAGEMENT AND SUPERVISION**



(a) The governing body shall establish written policies governing all aspects of agency operation. Such policies shall be available for inspection by the department.

(b) The home health agency shall designate an individual to serve as agency director. The agency director shall have the authority and responsibility for administrative direction of the home health agency.

(c) The home health agency shall designate a physician or registered nurse to supervise professional activities in providing home health services in accordance with the orders of the physician responsible for care of the patient and under a plan of treatment established by such physician.

(d) There shall be written documentation that specifies the responsibilities and authority of the agency director and professional supervisor.

(e) If either of the positions of agency director or professional supervisor becomes vacant, the department shall be notified within 72 hours in writing of such vacancy along with the name of the replacement, if available.

(f) The agency director and professional supervisor may be the same individual.

(g) No home health agency shall delegate its administrative and supervisory functions to another agency or organization.

(h) The home health agency shall have written policies which identify the specific geographic area in which the agency provides services. Where applicable, these geographic area policies shall be consistent with the certificate of need restrictions on geographic area.

*Statutory Authority G.S. 131E-140.*

#### .0206 FINANCIAL AND STATISTICAL RECORDS

(a) The home health agency shall establish, maintain and make available for inspection records of operating costs, annual budgets and statistical records.

(b) The records shall include at a minimum: hours worked by and salary paid to agency employees; patient census information including numbers of referrals, admissions, discharges, patient diagnoses and other statistical data as required for the operation of the agency or by the department.

(c) Records shall be retained for a period of not less than five years.

(d) When a home health agency operates as a part of a health care facility licensed under Article 5 or 6 of G.S. 131E, the agency shall maintain records of activities and expenditures that are separate and identifiable.

*Statutory Authority G.S. 131E-140.*

#### .0207 PERSONNEL

(a) Written policies shall be established and implemented which control the exposure of the patient and employees to persons with communicable diseases. Employee health examinations shall include tuberculosis screening upon employment and annually thereafter throughout their period of employment.

(b) Written policies shall be established and implemented which include orientation and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

(c) Job descriptions for every position shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and, when applicable, for which they are properly licensed.

(d) Personnel records shall be established and maintained for each employee which include education; trainings; previous experience; verification of license, when applicable; other qualifications; annual performance evaluations; and evidence of health screening.

*Statutory Authority G.S. 131E-140.*

#### .0208 ADVISORY GROUP OF PROFESSIONAL PERSONNEL

(a) An advisory group of professional personnel including at least one physician and one registered nurse and appropriate representatives from other professional disciplines shall:

(1) review and evaluate annually agency policies governing the scope of services offered; admission and discharge policies; medical supervision and plan of treatment; emergency care; clinical records; personnel qualifications and program evaluation;

(2) advise the agency on professional issues; and

(3) assist the agency in maintaining liaison with other health care providers in the community.

(b) The group shall meet at least quarterly. Minutes of advisory group meetings shall be maintained by the agency.

*Statutory Authority G.S. 131E-140.*

#### .0209 EVALUATION



(a) A comprehensive evaluation of the agency's total operation shall be carried out at least annually by:

- (1) the advisory group of professional personnel described in Rule .0208 of this Subchapter;
- (2) agency staff and consumers; or
- (3) appropriate professional persons outside the agency working with consumers.

The evaluation shall assure the appropriateness and quality of the agency's services with findings used to verify policy implementation; to identify problems; and to establish problem resolution and policy revision as necessary.

(b) The evaluation must consist of an overall policy and administration review. Statistical data to be assessed shall include the following as a minimum:

- (1) number of patients receiving each service;
- (2) number of visits by discipline;
- (3) patient diagnosis;
- (4) sources of referrals;
- (5) numbers and reasons for nonacceptance of patients; and
- (6) reasons for discharge.

(c) An evaluation of the agency's clinical records shall be carried out at least quarterly by appropriate health professionals representing the scope of the agency's program. The evaluation shall include a review of sample active and closed clinical records to ensure that agency policies are followed in providing services, both direct and under arrangement; and to assure that the quality of service is satisfactory and appropriate. The review shall consist of a representative sample of all services provided by the agency.

(d) Documentation of the evaluation shall include the names of persons carrying out the evaluation; the criteria and methods used to accomplish it; and the action taken by the agency as a result of the findings.

*Statutory Authority G.S. 131E-140.*

#### .0210 HOSPICE CARE

If a home health agency offers or provides a hospice program of care, such services shall be in compliance with all provisions of 10 NCAC 3F (Hospice Licensing Rules), with the exception of rules requiring a separate hospice license. Should the home health agency's hospice program be found in non-compliance with hospice licensure rules and statutes, that shall be a violation of their home health agency license. Adverse action shall be taken in accordance with Section .0100 of this Subchapter and injunctive relief may be sought in accordance with North Carolina General Statute 131E-206.

*Statutory Authority G.S. 131E-201; 131E-202; 131E-203; 131E-206.*

### SECTION .0300 - SCOPE OF SERVICES

#### .0305 SERVICE REQUIREMENTS

In addition to skilled nursing service, the agency must provide at least one other therapeutic service; i.e. physical, speech, or occupational therapy, social work services, or home health aide services. The agency shall provide or make arrangements for obtaining any necessary medical supplies, equipment or prosthetic devices needed by the patient at home. The agency shall be required to provide, at least, on-call skilled nursing services on a 24 hour basis, seven days per week.

*Statutory Authority G.S. 131E-140.*

#### .0306 ACCEPTANCE OF PATIENTS

The home health agency shall implement and follow written policies governing the acceptance of patients. Considerations relevant to the acceptance of patients include:

- (1) adequacy and suitability of agency personnel and resources to provide the services required by the patient;
- (2) reasonable expectation that the patient's medical, nursing, and social needs can be met adequately at home;
- (3) adequate physical facilities in the patient's home for his proper care; and
- (4) availability of family or substitute family member able and willing to participate in the patient's care.

*Statutory Authority G.S. 131E-140.*

#### .0307 NURSING SERVICES AND DUTIES

(a) Nursing services shall be provided by or under the supervision of a registered nurse and in accordance with the North Carolina Nurse Practice Act, G.S. Chapter 90, Article 9A.

(b) Registered nurse duties include the following as a minimum:

- (1) regularly assess the nursing needs of the patient;
- (2) develop and implement the patient's nursing care plan;
- (3) provide nursing services, treatment, and diagnostic and preventive procedures;
- (4) initiate preventive and rehabilitative nursing procedures appropriate for the patient's care and safety;
- (5) observe signs and symptoms and report to the physician any reactions to treatment;

- drugs, or changes in the patient's physical or emotional condition;
- (6) teach, supervise, and counsel the patient and family members about providing nursing care for the patient at home; and
  - (7) supervise and train other nursing service personnel.
- (c) Licensed practical nurse duties are performed under the supervision of a registered nurse and include the following as a minimum:
- (1) observe, record and report to the supervisor on the general physical and mental condition of the patient;
  - (2) administer prescribed medications and treatments;
  - (3) assist the physician or registered nurse in performing specialized procedures; and
  - (4) teach the patient and family members about providing nursing care to the patient at home.

*Statutory Authority G.S. 131E-140.*

#### .0308 PHYSICAL THERAPY SERVICES

- (a) If an agency provides or arranges for physical therapy such services shall be provided by or under the supervision of a licensed physical therapist and in accordance with G.S. Chapter 90, Article 18B, Physical Therapy.
- (b) Physical therapy duties include the following as a minimum:
- (1) assess the patient to determine level of physical function;
  - (2) establish and implement physical therapy treatment plan;
  - (3) observe, record, and report to the physician any reaction to treatment or changes in the patient's condition;
  - (4) instruct the family in the patient's total physical therapy program; and
  - (5) instruct family members, home health aides and other health team personnel in performing appropriate therapy treatment.

*Statutory Authority G.S. 131E-140.*

#### .0309 SPEECH THERAPY/PATHOLOGY SERVICES

- (a) If an agency provides or arranges for speech therapy, or services in speech pathology or audiology such services shall be provided in accordance with G.S. Chapter 90, Article 22, North Carolina Licensure Act for Speech and Language Pathologists and Audiologists.
- (b) Speech pathologist duties include the following as a minimum:
- (1) assess patients with speech, hearing or language disorders;

- (2) establish and implement the speech therapy treatment plan;
- (3) record and report to the physician any reaction to treatment and changes in the patient's condition;
- (4) teach other health team personnel and family members to help improve and correct the patient's speech, hearing and language disabilities; and
- (5) counsel the patient and family about the patient's speech, hearing and language disabilities.

*Statutory Authority G.S. 131E-140.*

#### .0310 OCCUPATIONAL THERAPY SERVICES

- (a) If an agency provides or arranges for occupational therapy, such services shall be provided in accordance with G.S. Chapter 90, Article 18D, Occupational Therapy.
- (b) Occupational therapist duties include the following as a minimum:
- (1) assess the patient's functional ability to perform activities of daily living;
  - (2) establish and implement the occupational therapy treatment plan;
  - (3) observe, record, and report to the physician any reaction to treatment and any changes in the patient's condition;
  - (4) instruct family members, home health aides and other health team personnel in appropriate therapy methods; and
  - (5) design, develop and fit orthotic devices and self-help devices.

*Statutory Authority G.S. 131E-140.*

#### .0311 SOCIAL WORK SERVICES

- (a) If an agency provides or arranges for social work services, such services shall be provided under the supervision of a social worker and in accordance with the plan of treatment.
- (b) Social work services include the following as a minimum:
- (1) assist the physician and other members of the health team in understanding the significant social and emotional factors related to the patient's health problems;
  - (2) assess social and emotional factors in order to estimate the patient's capacity and potential to cope with problems of daily living;
  - (3) help the patient and family to understand, accept, and follow medical recommendations and provide services planned to restore the patient to optimum social and health adjustment within his capacity;

- (4) assist the patient and family with personal and environmental difficulties which predispose toward illness or interfere with the patient obtaining maximum benefits from medical care; and
- (5) assist the patient and family in the utilization of appropriate community resources.

Statutory Authority G.S. 131E-140.

**.0312 HOME HEALTH AIDE SERVICES**

- (a) If an agency provides or arranges for home health aide services, the services shall be provided in accordance with the plan of treatment.
- (b) Home health aides shall be under the supervision of a registered nurse, physical therapist, occupational therapist or speech pathologist.
- (c) Home health aides shall follow instructions for patient care written by a registered nurse, licensed physical therapist, occupational therapist or speech pathologist. Home health aide duties include the following as a minimum:
  - (1) help with prescribed exercises which the patient and home health aides have been taught by appropriate professional personnel;
  - (2) provide personal care (i.e., bathing, care of mouth, skin and hair);
  - (3) assist with ambulation;
  - (4) assist with medications which are ordinarily self-administered and which are ordered by a physician;
  - (5) perform incidental household services which are essential to the patient's care at home; and
  - (6) record and report changes in the patient's condition, family situation or needs to the appropriate health care professional.

Statutory Authority G.S. 131E-140.

**.0313 SUPERVISION OF HOME HEALTH AIDES OR OTHER PERSONNEL**

- (a) Home health aides or other allied health personnel utilized in providing home health services shall be trained and supervised by professional personnel appropriate for the service provided.
- (b) A registered nurse, occupational therapist, physical therapist or speech pathologist shall supervise a home health aide by making a supervisory visit to the patient's home at least every two weeks, with or without the aide's presence, to assess the care and services being provided.
- (c) Other allied health personnel, including but not limited to licensed practical nurses, licensed physical therapy assistants, and licensed occupational therapy assistants shall be supervised by

professional personnel appropriate for the services provided on a planned basis to adequately review individual plans of treatment and assess patient progress.

- (d) Documentation of supervisory visits or reviews shall be maintained in the patient's medical record, and shall include the supervisor's assessment of the patient's general condition, environment, and progress.

Statutory Authority G.S. 131E-140.

**.0314 ARRANGEMENTS FOR SERVICES WITH OTHER AGENCIES/INDIVIDUALS**

- (a) When a home health agency makes arrangements for providing services by other agencies or individuals, there shall be a written agreement, signed by both providers which includes the following:
  - (1) specific service to be provided;
  - (2) period of time the contract is to be in effect;
  - (3) availability of services;
  - (4) financial arrangements;
  - (5) verification that any individual providing service is appropriately licensed as required by statute;
  - (6) provision for supervision of contract personnel where applicable;
  - (7) assurance that individuals providing services under contractual arrangements meet the same requirements as those specified for home health agency personnel; and
  - (8) provision for the documentation of services rendered in the patient's medical record.
- (b) All contract services shall be provided in accordance with the physician's plan of treatment and the patient care plan.
- (c) The home health agency shall assure that all contract services are provided in accordance with the agreement.

Statutory Authority G.S. 131E-140.

**SECTION .0400 - ESTABLISHMENT: REVIEW/PLAN OF TREATMENT**

**.0418 POLICIES**

A home health agency shall have written policies and procedures for assuring that services and items to be provided are specified under a plan of treatment established and regularly reviewed by the physician responsible for the care of the patient.

Statutory Authority G.S. 131E-140.

**.0419 PLAN OF TREATMENT**

(a) The plan of treatment must be signed by the physician responsible for the care of the patient and incorporated in the medical record.

(b) The plan of treatment shall include as a minimum:

- (1) type of service required;
- (2) frequency of visits;
- (3) equipment required;
- (4) activities permitted;
- (5) functional limitations;
- (6) rehabilitation potential;
- (7) diet and nutritional needs;
- (8) medications and treatments;
- (9) specific therapies;
- (10) pertinent diagnoses;
- (11) mental status;
- (12) prognosis; and
- (13) safety measures.

*Statutory Authority G.S. 131E-140.*

**.0420 REVIEW**

(a) The total plan of treatment must be reviewed by the patient's physician in consultation with agency professional personnel as often as the severity of the patient's illness requires but not less than once every two months.

(b) Any health professional providing services shall notify the physician of changes in the patient's condition which indicate the need for altering the treatment plan or for terminating services.

*Statutory Authority G.S. 131E-140.*

**.0421 PATIENT CARE CONFERENCES**

Appropriate agency staff shall have patient care case conferences to assure coordination of services rendered and to review the patient care plan. Documentation of these case conferences shall be maintained in the patient's record.

*Statutory Authority G.S. 131E-140.*

**SECTION .0500 - DRUG AND TREATMENT ORDERS**

**.0504 POLICIES AND PROCEDURES**

The home health agency shall have policies and procedures relative to the administration of drugs and treatments.

*Statutory Authority G.S. 131E-140.*

**.0505 ORDERS**

(a) Orders for drugs and treatments shall be signed by the physician and the original incorporated in the patient's medical record.

(b) Verbal orders for drugs and nursing treatments shall be given to a licensed nurse, recorded and signed by the person receiving it and countersigned by the physician within one week.

(c) Verbal orders for allied health services other than nursing shall be given to either a licensed nurse or the appropriate health professional, recorded and signed by the person receiving it and countersigned by the physician within one week.

*Statutory Authority G.S. 131E-140.*

**.0506 STAFF RESPONSIBILITY**

(a) Agency licensed nursing staff shall be responsible for checking all medications and shall be specifically accountable for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in the patient's condition that contraindicates continued administration of the medication;
- (7) anticipating those effects which may rapidly endanger a patient's life or well-being; and
- (8) notifying the physician of any problems.

(b) Agency licensed nursing staff shall instruct the patient and family members as necessary in following the drug regimen prescribed by the physician.

*Statutory Authority G.S. 131E-140.*

**SECTION .0600 - MEDICAL RECORDS**

**.0604 REQUIREMENT**

(a) The home health agency shall maintain a medical record for each patient receiving services.

(b) The agency shall assure that medical records are kept confidential and secure on the licensed premises.

(c) Medical records shall be retained for a period of not less than five years from the date of the most recent discharge of the patient.

*Statutory Authority G.S. 131E-140.*

**.0605 CONTENT OF RECORD**

The medical record shall contain pertinent past and current medical and social data and shall include the following information as a minimum:

- (1) Admission data:
  - (a) identification data (name, address, telephone number, date of birth, sex, marital status, social security number);

- (b) names of next of kin and/or legal guardian;
  - (c) names of other family members;
  - (d) source of referral;
  - (e) admission and discharge dates from hospital or other institution when applicable;
  - (f) names of physicians responsible for the patient's care; and
  - (g) assessment of home environment.
- (2) Clinical data:
- (a) patient's diagnoses;
  - (b) physician's plan of treatment including drugs and treatments, diet, activity and specific services and therapies required;
  - (c) initial assessments by appropriate disciplines;
  - (d) patient care plan utilizing problem identification, the establishment of goals and proposed interventions;
  - (e) progress notes containing a record of all services provided, directly and by contract, with entries dated and signed by the individual providing the service; and
  - (f) discharge summary which includes an overall summary of services provided by the agency and the date and reason for discharge. When a specific service to a patient is terminated and other services continue, there shall be documentation of the date and reason for terminating the specific service.

Statutory Authority G.S. 131E-140.

#### SECTION .0900 - GENERAL

##### .0901 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Agency director" means the person having administrative responsibility for the operation of the home care agency.
  - (2) "Department" means the North Carolina Department of Human Resources.
  - (3) "Follow-up care" means services provided to a licensed hospital's discharged patient in his home by a hospital's employees, not to exceed two visits to a patient.
  - (4) "Governing body" means the person or group of persons having full legal authority and ownership responsibility for the operation of the home care agency.
  - (5) "Home care agency" means a private or public organization which provides home care services.
  - (6) "Home care agency premises" means the physical site where the home care agency maintains any staff performing administrative functions, and maintains its personnel records, or maintains its client service records, or holds itself out to the public as being a location for receipt of client referrals.
- (7) "Home care services" means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:
- (a) Nursing care;
  - (b) Physical, occupational or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;
  - (c) Medical social services;
  - (d) In-home aide services that involve hands-on care to an individual;
  - (e) Infusion nursing services; and
  - (f) Assistance with pulmonary care, pulmonary rehabilitation or ventilation. The term does not include the following:
    - (i) health promotion, preventative health and community health services provided by public health departments;
    - (ii) maternal and child health services provided by public health departments, by employees of the Department of Environment, Health, and Natural Resources under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Environment, Health, and Natural Resources to provide services under G.S. 130A-124;
    - (iii) hospitals licensed under Article 5 or Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital;
    - (iv) facilities and programs operated under the authority of G.S. 122C;
    - (v) schools, when providing services pursuant to Article 9 of Chapter 115C;
    - (vi) the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes;
    - (vii) hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient;
    - (viii) an individual who engages solely in providing his own services to other individuals;
    - (ix) incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or

- (x) nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that:  
 (A) it is not a licensed home care agency, and  
 (B) it does not make any representations or guarantees concerning the training, supervision or competence of the personnel provided.
- (8) "Home health agency" means an agency as defined in Chapter 131-136(4) of the General Statutes.
- (9) "Home health aide" means an in-home aide qualified to provide services under a home health agency.
- (10) "Infusion nursing services" means those services related to the administration of pharmaceutical agents directly into a body organ or cavity, or via the intravenous, intraspinal, or epidural routes.
- (11) "In home aide services" are those paraprofessional services which assist the individual, his family or both with essential home management tasks, personal care task, or supervision of the client's activities, or all of the above, to enable the individual, his family or both, to remain and function effectively at home as long as possible.
- (12) "Licensed practical nurse" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (13) "Medical social services" means those professional services provided to an individual in his home by a medical social worker, or by a medical social worker assistant under the supervision of a medical social worker, when provided by a home care agency in conjunction with other nursing or therapy services provided by the same agency.
- (14) "Medical social worker" means a person with a master degree from a school of social work approved by the Council on Social Work Education who is eligible for certification by the North Carolina Certification Board for Social Work as a Certified Master Social Worker.
- (15) "Medical social worker assistant" means a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least one year of social work experience.
- (16) "Nursing registry" means a person who maintains a list of nurses or in-home aides or both which is made available to persons seeking nursing care or in-home aide services. A "nursing registry" does not include a registry kept by a person who:  
 (a) collects a fee from a nurse, in-home aide or person seeking the services when the fee is contingent upon the employment or use of a nurse or in-home aide from the list; or  
 (b) arranges or coordinates the delivery of services provided by a nurse or in-home aide from the list; or  
 (c) supervises, evaluates or controls the provision of services by a nurse or in-home aide from the list.
- (17) "Nursing services" means professional services provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.
- (18) "Occupational therapist" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (19) "Occupational therapist assistant" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (20) "Occupational therapy services" means professional services provided by a licensed occupational therapist or a licensed occupational therapist assistant under the supervision of a licensed occupational therapist.
- (21) "Personal care" includes tasks that range from assistance to an individual with basic personal hygiene, grooming, feeding and ambulation to medical monitoring and other health care related tasks.
- (22) "Physical therapist" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (23) "Physical therapist assistant" means a person duly licensed as such holding a current license as required by North Carolina statute.
- (24) "Physical therapy services" means professional services provided by a licensed physical therapist or a licensed physical therapist assistant under the supervision of a licensed physical therapist.
- (25) "Physician" means a person licensed as such, holding a current license as required by North Carolina statute.
- (26) "Plan of care" means the written description of the authorized home care services and tasks to be provided to a client.
- (27) "Pulmonary care, pulmonary rehabilitation or ventilation services" means the provision of pulmonary support equipment and related service and includes, but is not limited to: oximetry, drawing of blood gasses, or delivery of medications via aerosolization, and management of ventilatory support equipment.

- (28) "Registered nurse" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (29) "Respiratory therapist" means a person who is certified by the National Board for Respiratory Care.
- (30) "Social worker" means a person who meets the qualifications of the North Carolina Office of State Personnel for social workers.
- (31) "Speech pathologist" means a person duly licensed as such, holding a current license as required by North Carolina statute.
- (32) "Speech therapy" means professional services provided by a licensed speech pathologist.

*Statutory Authority G.S. 131E-140.*

#### **.0902 LICENSE**

Home care agencies both public and private shall be licensed in accordance with G.S. 131E-138, except those exempted in G.S. 131E-136(3). Each home care agency premises shall obtain a license.

*Statutory Authority G.S. 131E-140.*

#### **.0903 APPLICATION FOR AND ISSUANCE OF LICENSE**

(a) An application for the operation of a home care agency shall be submitted to the Department prior to a license being issued. The home care agency shall establish, maintain and make available for inspection such documents, records and policies as required in this Section and statistical data sufficient to complete the licensure application and upon request of the Department, to submit an annual data report, including all information required by the Department.

(b) The Department shall issue a license to each home care agency. The type of initial and ongoing licensure inspections shall be at the discretion of the Department. Initial licensure shall be for a period of one year. Subsequent licensure may extend up to three years for agencies that have demonstrated compliance with licensure or accreditation standards. Each license shall expire at midnight on the expiration date on the license and is renewable upon application.

(c) The license shall be posted in a prominent location accessible to public view within the premises.

(d) The license shall be issued for the premises and persons named in the application and shall not be transferable. The name and street address under which the agency operates shall appear on the license. The license shall reflect the services

provided by the home care agency. For a home health agency, the license shall also reflect the counties in which the agency is authorized to provide home health services.

(e) Prior to change of ownership or the establishment of a new home health agency, the agency must be in compliance with all the applicable statutes, rules and policies established under Article 9 of Chapter 131E.

(f) Prior to change of ownership of a home care agency, the agency must notify the Department.

(g) Any agency adding a new service category as outlined in G.S. 131E-136 (a)-(f) shall notify the Department in writing prior to the provision of that service to any clients. The Department shall approve the added service prior to its implementation.

(h) A home care agency shall notify the Department in writing if it discontinues or is unable to provide for a period of six continuous months any service category as outlined in G.S. 131E-136 (a)-(f) that is listed on the agency's license.

*Statutory Authority G.S. 131E-140.*

#### **.0904 INSPECTIONS**

(a) Any home care agency licensed by the Department shall be subject to proper inspections by an authorized representative of the Department at any time as a condition of holding such license.

(b) Any organization subject to licensure which presents itself to the public as a home care agency, which does not hold a license, and is or may be in violation of Rule .0902 of this Section and G.S. 131E-138 shall be subject to proper inspections at any time by authorized representatives of the Department.

(c) Any authorized representative of the Department shall make his identity known to the person in charge prior to inspection.

(d) Inspection of service records shall be carried out in accordance with G.S. 131E-141(b).

(e) An inspection shall be considered proper whenever the purpose of the inspection is to determine whether the agency complies with the provisions of this Subchapter or whenever there is reason to believe that some condition exists which is not in accord with accepted public health standards and practices.

*Statutory Authority G.S. 131E-140.*

#### **.0905 MULTIPLE PREMISES**

If a person operates multiple home care agency premises:

- (1) the Department may conduct inspections at any or all of the premises and shall issue



- a license to each site based upon a sample inspection of any or all of the premises;
- (2) with advance notice, the Department may request records from any of the premises necessary to ensure compliance with the rules in this Section; and
- (3) the premises may share hands-on care staff or administrative staff, or centralize the maintenance of records, not withstanding anything herein to the contrary.

*Statutory Authority G.S. 131E-140.*

#### .0906 COMPLIANCE WITH LAWS

(a) The home care agency shall be in compliance with all applicable federal, state and local laws, rules and regulations.

(b) Staff of the home care agency shall be currently licensed or registered in accordance with applicable laws of the State of North Carolina.

(c) A home care agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if:

(1) the agency is already accredited by the Joint Commission on Accreditation of Health Care Organizations, National League for Nursing, National Home Care Council or North Carolina Accreditation Commission for In-Home Aide Services; and

(2) the agency is accredited for all of the home care services that it provides; or

(3) in the case of continuing care treatment communities licensed by the North Carolina Department of Insurance under Article 64 of Chapter 58 which also have nursing beds licensed by the Department under Article 6 of Chapter 131E, the Department certifies, as part of its licensure review or survey of the nursing beds, that the facility also meets all of the rules and regulations in this Subchapter.

The Department may, at its discretion, determine the frequency and extent of the review and inspection of home health agencies already certified as meeting federal requirements, but not more frequently than on an annual basis for routine reviews.

(d) Nothing in this Section shall prohibit the Department from conducting inspections as provided for in Rule .0904 of this Section.

(e) Any agency deemed to be in compliance by virtue of accreditation by one of the specified accrediting bodies listed in this Rule shall submit to the Department a copy of its accreditation report within 30 days after the home care agency receives its report each time it is surveyed by the

accrediting body. The agency shall notify the Department of any action taken that affects its accreditation status, either temporarily or permanently.

*Statutory Authority G.S. 131E-140.*

#### .0907 ADVERSE ACTION

The Department may deny, suspend, revoke, recall or amend a license in accordance with G.S. 131E-139 for any home care agency which significantly fails to comply with the rules contained in this Subchapter or which fails to implement an approved plan of correction for deficiencies cited by the Department. A home care agency may appeal any adverse decision made by the Department concerning its license by making such appeal in accordance with the Administrative Procedure Act, G.S. 150B and departmental rules 10 NCAC 1B .0200 et seq. As provided for in G.S. 131E-142, the Department shall seek injunctive relief to prevent an entity from establishing or operating a home care agency without a license. As provided for in G.S. 131E-141.1, a person is guilty of a misdemeanor and subject to fines for knowingly and willfully establishing or operating a home care agency without a license.

*Statutory Authority G.S. 131E-140.*

### SECTION .1000 - ADMINISTRATION

#### .1001 AGENCY MANAGEMENT AND SUPERVISION

(a) The governing body or its designee shall establish written policies governing agency operation. Such policies shall be available for inspection by the Department. The policies shall include, at the minimum, provision for the evaluation of the quality and scope of services offered, admission and discharge policies, supervision and plan of care, emergency care, service records, personnel qualifications, an organizational chart, program evaluation, and coordination of and referral to and from other community resources.

(b) The home care agency shall designate an individual to serve as agency director. The agency director shall have the authority and responsibility for administrative direction of the home care agency.

(c) The home care agency shall designate a professional responsible for supervising each type of home care service provided by the agency either directly or by contract. This individual may be the supervisor for one or more home care services and may also serve as the agency director.



(d) There shall be written documentation that specifies the responsibilities and authority of the agency director and supervisor(s).

(e) If the position of agency director becomes vacant, the Department shall be notified within one week in writing of such vacancy along with the name of the replacement, if available.

(f) The agency shall have the ultimate responsibility for the services provided under its license; however, it may make arrangements with contractors and others to provide services in accordance with Rule .1111 of this Subchapter.

(g) A home care agency shall have written policies which identify the specific geographic area in which the agency provides each service. For home health agencies, these geographic area policies shall be consistent with the certificate of need restrictions on geographic area for the agency's home health agency clients.

*Statutory Authority G.S. 131E-140.*

#### **.1002 FINANCIAL AND STATISTICAL RECORDS**

(a) The home care agency shall establish, maintain and make available for inspection, home care annual budget and statistical records.

(b) The records shall include information on the agency's home care staff, client demographics, payment sources and other statistical data as required for the operation of the agency or by the Department.

(c) Records shall be retained for a period of not less than three years.

(d) When a home care agency operates as a part of a health care facility licensed under Article 5 or 6 of G.S. 131E, or as a part of a larger diversified agency, records of home care activities and expenditures that are separate and identifiable shall be maintained for the home care agency.

*Statutory Authority G.S. 131E-140.*

#### **.1003 PERSONNEL**

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases. All hands-on care employees must follow the current Center for Disease Control and OSHA guidelines for infection control and must have an annual skin test for TB. As an alternative to an annual skin test, individuals who have previously tested positive to the TB skin test may obtain an annual verification from a health department or physician that the individual is free of TB symptoms.

(b) Written policies shall be established and implemented which include orientation and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

(c) Job descriptions for every position shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

(d) Personnel records shall be established and maintained for each home care employee which include education, training, previous experience, verification of professional or paraprofessional registration or license when applicable, other qualifications, and annual performance evaluations.

*Statutory Authority G.S. 131E-140.*

#### **.1004 EVALUATION**

(a) The home care agency's governing body or its designee shall, at least annually, conduct a comprehensive evaluation of the home care agency's total operation. The evaluation shall assure the appropriateness and quality of the agency's services with findings used to verify policy implementation, to identify problems, and to establish problem resolution and policy revision as necessary.

(b) The evaluation must consist of an overall policy and administration review, including the scope of services offered, arrangements for services with other agencies or individuals, admission and discharge policies, supervision and plan of care, emergency care, service records, personnel qualifications and program evaluation. Data to be assessed shall include the following as a minimum:

- (1) number of clients receiving each services;
- (2) number of visits or hours for each service;
- (3) client outcomes;
- (4) adequacy of staff to meet client needs;
- (5) numbers and reasons for nonacceptance of clients; and
- (6) reasons for discharge.

(c) An evaluation of the agency's client records shall be carried out at least quarterly by appropriate professionals representing the scope of the agency's program. The evaluation shall include a review of sample active and closed client records to ensure that agency policies are followed in providing services, both direct and under arrangement, and to assure that the quality of service is satisfactory and appropriate. The review

shall consist of a representative sample of all home care services provided by the agency.

(d) Documentation of the evaluation shall include the names of persons carrying out the evaluation, the criteria and methods used to accomplish it, and the action taken by the agency as a result of the findings.

*Statutory Authority G.S. 131E-140.*

#### .1005 HOSPICE CARE

If a home care agency offers or provides a hospice program of care, such services shall be in compliance with all provisions of 10 NCAC 31 (Hospice Licensing Rules), with the exception of rules requiring a separate hospice license. Should the home care agency's hospice program be found in non-compliance with the hospice licensure rules and statutes, that shall be a violation of their home care agency license. Adverse action shall be taken in accordance with Section .0900 of this Subchapter and injunctive relief may be sought in accordance with North Carolina General Statute 131E-206.

*Statutory Authority G.S. 131E-140.*

#### .1006 NURSING POOL

If a home care agency offers or provides a nursing pool, and does not wish to obtain a separate license for its nursing pool, such services shall be in compliance with all provisions of 10 NCAC 3V (Nursing Pool Licensing Rules), with the exception of rules requiring a separate nursing pool license. Should the home care agency's nursing pool be found in non-compliance with the nursing pool licensure rules and statutes, that shall be a violation of their home care agency license. Adverse action shall be taken in accordance with Section .0900 of this Subchapter and injunctive relief may be sought in accordance with North Carolina General Statute 131E-206.

*Statutory Authority G.S. 131E-140.*

#### .1007 CLIENT RIGHTS AND RESPONSIBILITIES

(a) A home care agency must provide each client with a written notice of the client's rights and responsibilities in advance of furnishing care to the client or during the initial evaluation visit before the initiation of services. The agency must maintain documentation showing that each client has received a copy of his rights and responsibilities.

(b) The notice must include at a minimum the client's right to:

- (1) be informed and participate in his plan of care;
- (2) voice grievances about his care and not be subjected to discrimination or reprisal for doing so;
- (3) confidentiality of his records;
- (4) be informed of his liability for payment for services; and
- (5) accept or refuse services.

(c) A home care agency shall provide all clients with a telephone number for information, questions or complaints about services provided by the agency.

(d) A home care agency shall investigate complaints made by a client or his family, and must document both the existence of the complaint and the resolution of the complaint.

*Statutory Authority G.S. 131E-140.*

### SECTION .1100 - SCOPE OF SERVICES

#### .1101 ACCEPTANCE OF CLIENTS

The home care agency shall implement and follow written policies governing the acceptance of clients. Considerations relevant to the acceptance of clients include:

- (1) adequacy and suitability of agency personnel and resources to provide the services required by the client;
- (2) reasonable expectation that the client's medical, nursing, personal, and social needs can be met adequately at home;
- (3) adequate physical facilities in the client's home for his plan of care; and
- (4) availability or absence of family or substitute family member able and willing to participate in the client's care where necessary to ensure the safety of the client.

*Statutory Authority G.S. 131E-140.*

#### .1102 NURSING SERVICES AND DUTIES

(a) If an agency provides nursing services, such services shall be provided by or under the supervision of a registered nurse and in accordance with the North Carolina Nurse Practice Act, G.S. Chapter 90, Article 9A, and the plan of care.

(b) Registered nurse duties include the following as a minimum:

- (1) regularly assess the nursing needs of the client;
- (2) develop and implement the client's nursing plan of care;
- (3) provide nursing services, treatment, and diagnostic and preventive procedures;

- (4) initiate preventive and rehabilitative nursing procedures appropriate for the client's care and safety;
- (5) observe signs and symptoms and report to the physician any reaction to treatment, drugs, or changes in the client's physical or emotional condition;
- (6) teach, supervise, and counsel the client and family members about providing care for the client at home; and
- (7) supervise and train other nursing service personnel.
- (c) Licensed practical nurse duties are performed under the supervision of a registered nurse and include the following as a minimum:
  - (1) observe, record and report to the supervisor on the general physical and mental condition of the client;
  - (2) administer prescribed medications and treatments;
  - (3) assist the physician or registered nurse in performing specialized procedures; and
  - (4) assist in teaching the client and family members about providing care to the client at home.
- (d) If an agency provides nursing services, the agency shall provide, at least, on-call nursing services on a 24 hour basis, seven days a week.

*Statutory Authority G.S. 131E-140.*

#### .1103 PHYSICAL THERAPY SERVICES

- (a) If an agency provides physical therapy services, such services shall be provided by or under the supervision of a licensed physical therapist and in accordance with G.S. Chapter 90, Article 18B, Physical Therapy, and the plan of care.
- (b) Physical therapy duties include the following as a minimum:
  - (1) assess the client to determine level of physical function;
  - (2) establish and implement physical therapy treatment plan;
  - (3) observe, record, and report to the physician any reaction to treatment or changes in the client's condition;
  - (4) instruct the family in the client's total physical therapy program; and
  - (5) instruct family members, in-home aides and other health team personnel in performing appropriate therapy treatment.

*Statutory Authority G.S. 131E-140.*

#### .1104 SPEECH THERAPY/PATHOLOGY SERVICES

- (a) If an agency provides speech therapy, or services in speech pathology or audiology such

services shall be provided in accordance with G.S. Chapter 90, Article 22, North Carolina Licensure Act for Speech and Language Pathologists and Audiologists and the plan of care.

(b) Speech pathologist duties include the following as a minimum:

- (1) assess clients with speech, language, voice, dysphagia, and/or hearing disorders;
- (2) establish and implement the speech therapy treatment plan;
- (3) record and report to the physician any reaction to treatment and changes in the client's condition;
- (4) teach other health team personnel and family members techniques to help improve and correct the client's speech, language, voice, dysphagia, and/or hearing potential; and
- (5) counsel the client and family about the client's speech, language, voice, dysphagia, and/or hearing disabilities.

*Statutory Authority G.S. 131E-140.*

#### .1105 OCCUPATIONAL THERAPY SERVICES

- (a) If an agency provides occupational therapy, such services shall be provided in accordance with G.S. Chapter 90, Article 18D, Occupational Therapy and the plan of care.
- (b) Occupational therapist duties include the following as a minimum:
  - (1) assess the client's functional ability to perform activities of daily living;
  - (2) establish and implement the occupational therapy treatment plan;
  - (3) observe, record, and report to the physician any reaction to treatment and any changes in the client's condition;
  - (4) instruct family members, in-home aides and other health team personnel in appropriate therapy methods; and
  - (5) design, develop and fit orthotic devices and self-help devices.

*Statutory Authority G.S. 131E-140.*

#### .1106 MEDICAL SOCIAL WORK SERVICES

- (a) If an agency provides medical social work services, such services shall be provided by or under the supervision of a medical social worker and in accordance with the plan of care.
- (b) Medical social work services include the following as a minimum:
  - (1) assist the physician and other members of the health team in understanding the significant social and emotional factors related to the client's health problems;

- (2) assess social and emotional factors in order to estimate the client's capacity and potential to cope with problems of daily living;
- (3) help the client and family to understand, accept, and follow medical recommendations and provide services planned to restore the client to optimum social and health adjustment within his capacity;
- (4) assist the client and family with personal and environmental difficulties which predispose toward illness or interfere with the client obtaining maximum benefits from medical care; and
- (5) assist the client and family in the utilization of appropriate community resources.

*Statutory Authority G.S. 131E-140.*

#### .1107 IN-HOME AIDE SERVICES

- (a) If an agency provides in-home aide services, the services shall be provided in accordance with the plan of care.
- (b) In-home aides shall follow instructions for client care written by the professional required for the services provided. In-home aide duties include, but are not limited to the following:
  - (1) help with prescribed exercises which the client and in-home aides have been taught by appropriate professional personnel;
  - (2) provide or assist with personal care (i.e., bathing, care of mouth, skin and hair);
  - (3) assist with ambulation;
  - (4) assist with medications which are ordinarily self-administered and which are ordered by a physician;
  - (5) perform incidental household services which are essential to the client's care at home; and
  - (6) record and report changes in the client's condition, family situation or needs to the appropriate health care professional.

*Statutory Authority G.S. 131E-140.*

#### .1108 INFUSION NURSING SERVICES

- (a) If an agency provides infusion nursing services, the services shall be provided by or under the supervision of a registered nurse and in accordance with the North Carolina Nurse Practice Act, G.S. Chapter 90, Article 9A, and a plan of care signed by a physician.
- (b) Infusion nursing duties include the following as a minimum:
  - (1) evaluate the client's health and psychosocial needs;
  - (2) regularly assess the nursing needs of the client;

- (3) develop and implement the client's infusion nursing plan of care;
- (4) teach and train the client or caregiver to administer drugs to the client, where applicable;
- (5) observe, assess and provide nursing care to the client's administration site; and
- (6) directly administer medications to the client.
- (c) If an agency provides or arranges for infusion nursing services, the agency shall provide, at least, on-call infusion nursing services on a 24 hours basis, seven days a week.

*Statutory Authority G.S. 131E-140.*

#### .1109 PULMONARY, PULMONARY REHABILITATION OR VENTILATION SERVICES

- (a) If an agency provides pulmonary, pulmonary rehabilitation or ventilation services, the services shall be provided by or under the supervision of a respiratory therapist or a registered nurse under a plan of care signed by a physician.
- (b) Pulmonary, pulmonary rehabilitation or ventilation services may include the following:
  - (1) assess the client's need for oxygen, other medical gasses and related equipment;
  - (2) teach and train client or caregivers to self-administer medical gasses or respiratory procedures;
  - (3) teach and train client or caregivers about home safety related to medical gasses and equipment;
  - (4) collect laboratory specimens; and
  - (5) evaluate functioning of ventilatory support equipment.
- (c) If an agency provides these services, the agency shall provide, at least, on-call respiratory care emergency response on a 24 hour basis, seven days a week.

*Statutory Authority G.S. 131E-140.*

#### .1110 SUPERVISION OF COMPETENCY OF IN-HOME AIDES OR OTHER PERSONNEL

- (a) In-home aides or other allied health personnel subject to occupational licensing laws shall meet competency testing requirements consistent with the appropriate occupational licensing laws and regulations. These individuals shall be supervised by an appropriate health care professional.
- (b) In-home aides or other allied health personnel who are not subject to occupational licensing laws shall only be assigned duties for which they have demonstrated competency.

These individuals shall be supervised by an appropriate professional or a competent, appropriately trained paraprofessional who is supervised by an appropriate professional.

(c) The appropriate supervisor as specified in Paragraph (a) or (b) in this Rule shall supervise an in-home aide or other allied health personnel by making a supervisory visit to the client's place of residence at least every three months, with or without the in-home aide's or other allied health personnel's presence, and at least annually, while the in-home aide or other allied health personnel is providing care to the client to assess the care and services being provided.

(d) Documentation of supervisory visits shall be maintained in the agency's records.

(e) The home care agency must have continuous supervision available, on-site where services are provided when necessary, during the hours that in-home aide services are provided.

*Statutory Authority G.S. 131E-140.*

#### **.1111 ARRANGEMENTS FOR SERVICES WITH OTHER AGENCIES OR INDIVIDUALS**

(a) When a home care agency makes arrangements for providing services through other agencies or individuals, or where the home care agency contracts with a state or county agency to provide licensed home care services, there shall be a written agreement, signed by both parties which includes the following:

- (1) specific service to be provided;
- (2) period of time the contract is to be in effect;
- (3) availability of services;
- (4) responsibility for development of the plan of care prior to notification of the client;
- (5) financial arrangements;
- (6) verification that any individual providing service is appropriately licensed or registered as required by statute;
- (7) provision for supervision of contract personnel where applicable;
- (8) assurance that individuals providing services under contractual arrangements meet the same requirements as those specified for home care agency personnel; and
- (9) provision for the documentation of services rendered in the client's service record.

(b) All contract services shall be provided in accordance with the client's plan of care.

(c) The home care agency shall assure that all contract services are provided in accordance with the agreement.

*Statutory Authority G.S. 131E-140.*

#### **SECTION .1200 - CASE REVIEW AND PLAN OF CARE**

##### **.1201 POLICIES**

A home care agency shall have written policies and procedures for assuring that services and items to be provided are specified under a plan of care.

*Statutory Authority G.S. 131E-140.*

##### **.1202 CASE REVIEW AND PLAN OF CARE**

(a) The plan of care is established in collaboration with the client and incorporated in the service record. The plan of care must be regularly reviewed at least every three months by the appropriate agency professional and revised as needed based on the client's needs. If physician orders are needed for the services, a home care health professional shall notify the physician of changes in the client's condition which indicate the need for altering the plan of care or for terminating services. Based upon the findings of the client assessment, the plan of care shall include as a minimum:

- (1) type of service(s) required;
  - (2) frequency of visits or hours of service;
  - (3) activity restrictions;
  - (4) safety measures; and
  - (5) service objectives and goals.
- (b) Where applicable, the plan of care includes, but is not limited to:
- (1) equipment required;
  - (2) functional limitations;
  - (3) rehabilitation potential;
  - (4) diet and nutritional needs;
  - (5) medications and treatments;
  - (6) specific therapies;
  - (7) pertinent diagnoses; and
  - (8) prognosis.

(c) So long as ongoing hands-on care is being provided to a client, a registered nurse, social worker or other appropriate professional shall visit the client in his residence at least quarterly to access the client's general condition, progress and response to services provided. Documentation of these visits shall be maintained in the client's service record.

(d) If the same professional is assigned responsibility for two or more of the following, these functions may be conducted during the same home visit:

- (1) quarterly assessment of client's condition and response;

- (2) provision of regularly scheduled professional services; or
- (3) supervision of in-home aide or other allied health personnel.

Statutory Authority G.S. 131E-140.

#### SECTION .1300 - PHARMACEUTICALS AND MEDICAL TREATMENT ORDERS

##### .1301 POLICIES AND PROCEDURES

If the home care agency administers any pharmaceuticals or medical treatments, it shall have policies and procedures relative to the administration of drugs and treatments.

Statutory Authority G.S. 131E-140.

##### .1302 ORDERS

(a) Orders for pharmaceuticals and medical treatments shall be signed by the physician or other person authorized by State law to prescribe such treatments and the original incorporated in the client's service records.

(b) Verbal orders for the administration of pharmacological agents and other medical treatment interventions shall be given to a licensed nurse, recorded and signed by the person receiving it and countersigned by the physician or other person authorized by State law to prescribe within two weeks.

(c) Verbal orders for allied health services other than nursing shall be given to either a licensed nurse or the appropriate health professional, recorded and signed by the person receiving it and countersigned by the physician or other person authorized by State law to prescribe within two weeks.

Statutory Authority G.S. 131E-140.

##### .1303 STAFF RESPONSIBILITY

(a) If a home care agency administers any pharmaceuticals or medical treatments, agency licensed nursing staff shall be responsible for checking all medications and shall be specifically accountable for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in the client's condition that contraindicates continued administration of the medication;
- (7) anticipating those effects which may rapidly endanger a client's life or well-being; and

(8) notifying the physician of any problems.

(b) Agency licensed nursing staff shall instruct the client and family members as necessary in following the drug regimen prescribed by the physician or other person authorized by State law to prescribe such regimens.

Statutory Authority G.S. 131E-140.

#### SECTION .1400 - SERVICE RECORDS

##### .1401 REQUIREMENT

(a) The home care agency shall maintain a service record for each client receiving services.

(b) The agency shall assure that service records are kept confidential and secure on the licensed premises.

(c) Service records shall be retained for a period of not less than five years from the date of the most recent discharge of the client.

Statutory Authority G.S. 131E-140.

##### .1402 CONTENT OF RECORD

(a) If the home care agency is not providing services to a client which require a physician's order, the service record shall contain the following information as a minimum:

(1) Admission data:

(A) identification data (name, address, telephone number, date of birth, sex, marital status, social security number);

(B) names of next of kin and/or legal guardian;

(C) names of other family members;

(D) source of referral; and

(E) assessment of home environment.

(2) Service data:

(A) initial assessments by appropriate professional of the client's functional status in the areas of social, mental, physical health, environmental, economic, activities of daily living and instrumental activities of daily living;

(B) identification of problems, the establishment of goals and proposed intervention;

(C) a record of all services provided, directly and by contract, with entries dated and signed by the individual providing the service;

(D) discharge summary which includes an overall summary of services provided by the agency and the date and reason for discharge. When specific service to a client is terminated and other services continue, there shall be documentation of the

date and reason for terminating the specific service; and

(E) evidence of coordination of services when the client is receiving more than one home care service.

(b) If the home care agency is providing services to a client which require a physician's order, the service record shall include as a minimum all of the items described in Paragraph (a) of this Rule and the following items:

(1) Admission data:

(A) admission and discharge dates from hospital or other institution when applicable; and

(B) names of physician(s) responsible for the client's care.

(2) Service data:

(A) client's diagnoses; and

(B) physician's orders for pharmaceuticals and medical treatments.

Statutory Authority G.S. 131E-140.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission/Division of Facility Services intends to amend rule(s) cited as 10 NCAC 46H .0203, .0204, .0301, .0304, .0305 and .0306 and repeal rule(s) cited as 10 NCAC 46H .0205 and .0303.*

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on March 4, 1992 at the Disability Determination Building, Room 1, 322 Chapanoke Rd., Raleigh, NC.*

*Reason for Proposed Action: Revise income eligibility and fee tables for subsidized child day care.*

*Comment Procedures: Comments may be presented in writing any time before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing to Donna Creech, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27611, 919/733-3055.*

## CHAPTER 46 - DAY CARE RULES

### SUBCHAPTER 46H - POLICIES FOR PROVISION OF CHILD DAY CARE SERVICES

#### SECTION .0200 - ELIGIBILITY FOR SERVICES

##### .0203 INCOME ELIGIBLE STATUS

(a) For the purpose of the rules in this Subchapter, the term "income unit" shall apply to persons who reside in the same household and who, according to North Carolina law, are responsible for the financial support of the individual whose eligibility for child day care services is being determined. Also for the purpose of determining eligibility for day care services, the terms "income unit" and "family" are used interchangeably in the rules in this Subchapter.

(b) When the amount of income available to an individual is a condition of eligibility for child day care services, it is necessary to determine the number of persons in the individual's income unit and the amount of the gross income available to the income unit.

(1) The number of individuals in the income unit is referred to as the "income unit size" or "family size". These terms are used interchangeably in the rules in this Subchapter.

(2) The total amount of the income used to determine day care eligibility is referred to as the "gross income of the income unit" or "family income". These terms are used interchangeably in the rules in this Subchapter.

(c) Child day care services may be provided to individuals other than those described in 10 NCAC 46D .0103(e) and in Rules .0202 and .0206 of this Subchapter provided the gross ~~monthly~~ annual income of the individual's income unit does not exceed the state's ~~established~~ maximum income eligibility limit (as defined in Rule .0204 of this Subchapter) for the number of persons in that income unit.

(d) The following are defined as separate income units for the purposes of determining eligibility and client fees for child day care services:

(1) Biological and adoptive parents and their minor children.

(2) A minor parent and his or her children.

(3) Each adult whether related or unrelated, other than spouses.

(4) Each child living with anyone other than their biological or adoptive parents.

(e) Income to be considered when computing the gross income of the income unit is listed in the Division of Social Services' Family Services Manual, as described in 10 NCAC 35A .0003.

Statutory Authority G.S. 143B-153.

##### .0204 INCOME ELIGIBILITY LEVELS



The established annual income is sixteen thousand two hundred and fifty two dollars (\$16,252) for a family of four and is adjusted accordingly to accommodate different size families.

(a) The maximum gross annual incomes for eligibility for subsidized child day care services, adjusted for family size, shall be no lower than as follows:

<u>Family Size</u>	<u>Gross Annual Income</u>
1	\$ 9,336
2	\$12,996
3	\$14,184
4	\$18,000
5	\$19,380
6	\$22,284
7	\$24,000
8 or more	\$26,004

(b) The maximum gross annual incomes for eligibility for subsidized child day care services shall not be higher than 75 % of the state median income, adjusted for family size.

(c) Income limits shall be increased only when state or federal funds are available subject to the approval of the Office of State Budget and Management.

*Statutory Authority G.S. 143B-153.*

#### .0205 MAXIMUM INCOME LEVELS

Child day care services may be provided to individuals whose gross monthly family income does not exceed 100 percent of the state's established income for a family of that size.

*Statutory Authority G.S. 143B-153.*

### SECTION .0300 - CLIENT FEES FOR CHILD DAY CARE SERVICES

#### .0301 GENERAL FEE POLICY

(a) No fees will be charged to the client when child day care services are provided to individuals in the following circumstances:

- (1) recipients of aid to families for dependent children payments;
- (2) recipients of supplemental security income benefits;
- (3) children receiving day care services in conjunction with protective services as described in 10 NCAC 35E .0106, up to a maximum of 12 months from the time protective services is initiated;
- (4) when day care services are provided as a support to a child receiving Child Welfare Services as described in the North Carolina Division of Social Services

Family Services Manual, Volume 1, Chapter II;

- (5) when a child with no income is living with someone other than his or her biological or adoptive parent or is living with someone who does not have court-ordered financial responsibility.

(b) Except as provided for in Paragraph (a), the client shall be assessed a fee for child day care services. when the family's gross monthly income is between 60 percent and 100 percent of the state's established income for their family size.

(c) Separate fees may be charged for the transportation component when provided to individuals whose gross monthly income is 60 percent or greater of the state's established income for this family size.

*Statutory Authority G.S. 143B-153(2a).*

#### .0303 MAXIMUM FEE CHARGES

The fee schedules adopted by the Social Services Commission shall provide for a maximum amount which may be charged a family in total fees during any one month. The schedule of maximum fees shall be adjusted according to family size and income.

*Statutory Authority G.S. 143B-153.*

#### .0304 ADJUSTMENTS IN FEES

(a) When child day care services are provided to more than one member of the same family, the first child served is charged the full fee; the second child served is charged ten percent of the fee; each additional child is charged five percent of the fee. When child day care services are provided to more than one member of the same family, the parent shall be charged the full fee for the first child. The fee charged for each additional child shall be fifty percent of the fee for the first child.

(b) If family medical expenses exceed ten percent of the family's gross income in any eligibility period, the amount of the expenses which exceed the gross income shall be deducted from the gross income. The reduced income shall be used to determine the amount of the fees to be assessed the family for child day care services.

(c) When the approved care plan is for less than full-day care, the assessed fee for the service is adjusted by the appropriate percentage relative to the approved care plan.

*Statutory Authority G.S. 143B-153.*

#### .0305 MINIMUM FEE CHARGES



Fee charges will to the client may be disregarded when the total amount due is less than five dollars (\$5.00) per month.

Statutory Authority G.S. 143B-153.

**.0306 COLLECTION OF FEES**

Reimbursement to the county department of social services or other provider will be terminated after a service has been provided for as long as three consecutive months without full payment of the fee due for provision of that service. Collection of fees assessed to the client shall be the responsibility of the child day care provider.

Statutory Authority G.S. 143B-153.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission/Division of Social Services intends to amend rule(s) cited as 10 NCAC 39D .0401 and .0403; 10 NCAC 42B .1201, .1206 and .1207; 10 NCAC 42C .2302, .3103 and .3104.*

*The proposed effective date of this action is May 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on March 4, 1992 at the Disability Determination Building, Room 1, 322 Chapanoke Road, Raleigh, NC.*

*Reason for Proposed Action:*

**Rules .0401 - .0403** - Federal regulations require that the State define the types of supportive services to be made available to JOBS participants. These amendments are proposed to conform with rules previously adopted by the Social Services Commission.

**Rules .1201, .1206 and .1207** - Rules are being amended to implement training program implementation policies and guidelines which were developed by a 29-member committee comprised of providers, agencies, organizations. The rules describe various available resources and methods by which training requirements may be satisfied.

**Rules .2302, .3103 and .3104** - To implement rule changes initiated by the Domiciliary Home Licensure Program Rules Review Committee.

*Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing to Donna Creech, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, 919/733-3055.*

**CHAPTER 39 - EMPLOYMENT PROGRAMS**

**SUBCHAPTER 39D - JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM**

**SECTION .0400 - SUPPORTIVE SERVICES**

**.0401 SUPPORTIVE SERVICES TO BE AVAILABLE IN JOBS COUNTIES**

Based on fund availability and service availability, the following services, as defined in this Section, shall be available when necessary to support a JOBS participant's employment plan:

- (1) Health Support Services;
- (2) ~~Chore~~ In-Home Aide Services;
- (3) Transportation;
- (4) Personal and Family Counseling;
- (5) Individual and Family Adjustment;
- (6) Day Care Services for Adults;
- (7) Child Care Transportation;
- (8) Participation Expenses.

Statutory Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

**.0403 IN-HOME AIDE SERVICES**

~~Chore~~ In-Home Aide services are provided to JOBS participants and their family members when needed to support the participant's employability plan. ~~Chore services means the provision of care for persons or assistance to persons by performing home management or personal care tasks that are essential to the activities of daily living. Such tasks are performed to enable individuals to remain in their own homes when they are unable to carry out these activities for themselves and where no responsible person is available for these tasks. Chore services shall be provided under professional direction and only by persons who have received training for the proper performance of such tasks. Professional direction means guidance and supervision in implementing a plan of care based on individual assessment of a person's health status and particular care needs. Home management includes tasks related to maintaining the home, shopping for and preparing meals and providing essential transportation for the client. Personal~~

care includes tasks related to physical care and feeding of clients. The specific tasks that may be performed are defined according to level of the task, supervision required and training required. The primary service definition of In-Home Aide Services as found in 10 NCAC 35E .0312(1) is hereby adopted by reference including subsequent amendments and editions. Requirements governing the standards for the delivery of In-Home Aide Services as found in 10 NCAC 42H .0902 - .0914 are hereby adopted by reference including subsequent amendments and editions. Copies of the incorporated material may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, North Carolina 27611-7447 (919-733-2678) at the cost of two dollars and fifty cent (\$2.50) for the first ten pages and fifteen cent (\$.15) per additional page.

Statutory Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

## CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

### SUBCHAPTER 42B - LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

#### SECTION .1200 - PERSONNEL

##### .1201 PERSONNEL QUALIFICATIONS

(a) The qualifications of administrator and co-administrator hired after May 1, 1992 supervisor in charge, manager, and co-manager are as follows:

- (1) must be an adult age 21 or older;
- (2) must be a high school graduate or certified under the G.E.D. Program (applies to those employed on or after August 1, 1991);
- (3) (2) must be in good physical, mental and emotional health (DSS 1864); as determined by a physician;
- (4) (3) must provide written documentation about convictions of criminal offenses from the clerk of court in the county in which the conviction was made, and about any driving offenses other than minor traffic violations from the motor vehicles office;
- (5) (4) must be willing to improve abilities by taking suitable courses offered in the local community and attending workshops related to the management of homes and training of developmentally disabled adults; have a Bachelor's degree in a human service field plus one year of related

experience; or a Bachelor's degree in a related field and complete a training program approved by the Department of Human Resources within one year of employment; or a 2 year Associate Degree in a related field plus two years of related experience and complete the approved training program within one year of employment; or high school graduation or certification under the G.E.D. program plus three years of related experience and complete the approved training program within one year of employment;

(5) must document ability to obtain credit or have other resources to meet operating costs and provide required services when unexpected situations arise, such as extended resident vacancies and major home repairs;

(6) must be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining these Rules and other legal requirements, including those of the Civil Rights Act of 1964 when the administrator has signed the Statement of Assurance of Compliance with Title VI of the Civil Rights Act of 1964 (Form DSS-1464);

(7) must provide three current reference sources including one from the most recent employer;

(8) must earn 15 hours of continuing education credits annually in accordance with procedures established by the Department of Human Resources.

(b) The qualifications of the supervisor-in-charge hired after May 1, 1992 are as follows:

(1) must meet the requirements referenced to in Paragraph (a), Subparagraphs (2), (3), (7), and (8) of this Rule;

(2) must be age 18 or older;

(3) must document attainment of high school graduation or G.E.D. certification;

(4) must document two years of prior experience in the care of persons with developmental disabilities or complete a training program approved by the Department of Human Resources within one year of employment.

Statutory Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

##### .1206 HEALTH REQUIREMENTS

A medical examination certifying the person is in good health (form DSS 1864 or other appropriate statement completed by a physician) is required for the following individuals:

(1) manager and each family member living and sleeping in the home;

(2) co-manager and each family member living and sleeping in the home.

(a) The administrator and supervisor-in-charge must have a medical examination, including tests for tuberculosis documenting freedom from the disease in a communicable stage, within 30 days prior to employment.

(b) All staff and live-in non-residents must be tested for tuberculosis within 30 days prior to employment or living in the home, and annually thereafter.

(c) All staff and live-in non-residents must be screened for Hepatitis B infection according to guidelines published by the Department of Human Resources.

(d) Any staff member or live-in non-resident who behaves in a manner that jeopardizes the health and safety of others in the home may be required to undergo a medical or psychological examination.

Statutory Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

#### .1207 GENERAL PERSONNEL REQUIREMENTS

Requirements for personnel are as follows:

(1) A copy of the physician's statement must be in the home and available for investigation by proper authorities at all times while the person is in the employ of the home.

(2) In private for profit homes the administrator and co-administrator must apply for their position(s) on the form DSS 1860, and be approved on the form DSS 1861.

(3) In private non-profit homes the board of directors must apply on the form DSS 1860 and be approved on form DSS 1861.

(4) A personnel record shall be maintained for each staff member including his job application, references and an annual health report. The group home shall have a manual of personnel policies and procedures. The manual shall contain information dealing with conditions of employment, salary classifications, job descriptions, job performance, evaluation, and promotional opportunities, fringe benefits, sick and vacation leave, off-duty leave, workmen's compensation, a personnel grievance system, and severance procedures. Each employee shall be given a copy of the manual when he begins work in the facility.

(5) The manager, co-manager and relief person(s) in charge must apply for their position(s) on the form DSS 1862, and doc-

umentation that the qualifications have been met for these positions must be on file in the home prior to hiring the manager, co-manager, and relief person(s) in charge.

(6) There shall be an in-service training program for employees of the group home provided by staff of the area mental health and mental retardation program, regional mental health and mental retardation office, division of mental health and mental retardation services, division of social services, university, community college and/or technical institute, or other appropriate agencies or individuals. Each group home shall participate in pre-service training. Pre-service training should include:

(a) orientation to community organization;

(b) regional mental retardation facilities;

(c) practice in a group home.

(7) The area mental health and mental retardation program shall be responsible for continuous in-service education and training programs.

(8) Staff should be encouraged to read literature pertinent to the care of, and programming for, the mentally retarded.

(a) Competent staff must be employed as needed, to perform housekeeping, supervision and personal care of the residents. The number of staff will be determined by the home's license capacity and number of family members living in the home who require care and supervision.

(b) A detailed job description must be on file in the facility for each staff member, signed by the administrator and the employee.

(c) All direct care staff must complete training annually in standard first aid and cardiopulmonary resuscitation.

(d) All staff must demonstrate ability to apply all of the home's accident, fire safety and emergency procedures.

(e) All staff must be informed of the confidential nature of resident information and must protect such information from unauthorized disclosure in accordance with G.S. 131D-21 (1) and (6).

(f) Any staff member left alone with the residents must be 18 years of age or older.

Statutory Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

#### SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

#### SECTION .2300 - SERVICES

#### .2302 HEALTH CARE

(a) The administrator is responsible for providing occasional or incidental medical care, such as providing therapeutic diets, rotating positions of residents confined to bed, and applying heat pads.

(b) The resident or his responsible person is to be allowed to choose a physician to attend to him.

(c) Immediate arrangements must be made by the administrator with the resident or his responsible person for the resident to secure another physician when he cannot remain under the care of his own physician. The name, address and telephone number of the resident's physician is to be recorded on Form DSS-1865, the Resident Register.

(d) If a resident is hospitalized, a completed FL-2 or patient transfer form must be obtained before the resident can be readmitted to the facility.

(e) Between annual medical examinations there may be a need for a physician's care. The Form DSS-1867 or an equivalent record is to be used by the physician to report any drugs prescribed and any treatment given or recommended for minor illnesses.

(f) All contacts (office, home or telephone) with the resident's physician are to be recorded on Form DSS-1867 or an equivalent health services record which is to be retained in the resident's record in the home. The physician's orders must be included in the health services record used for the resident, as follows:

- (1) When the resident is examined in the physician's office, the health services record is to be taken and the physician is to add all necessary information;
- (2) When the physician examines the resident in the home, the physician is to add all necessary information into the health services record; and
- (3) When a physician's order is given by telephone, the administrator or supervisor-in-charge must enter this into the health services record, initial it and have the physician sign it within 30 days from the date the order is given.

(g) The use of physical restraints is to be allowed only on written instruction of a licensed physician. This order must specify the reason for their use, the type to use and the time intervals at which the restraints are to be loosened or removed. The order must be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the DSS-1867 or approved equivalent (for subsequent orders).

**Note:** The use of a physical restraint refers to the application of a mechanical device to a person to

limit movements for therapeutic or protective reasons. These include anklets, wristlets, and restraining sheets for non-invalids. Side rails and restraining sheets (when used in chair) for invalids are not considered restraints. The use of a physical restraint refers to the application of a mechanical device to a person to limit movement for therapeutic or protective reasons, excluding siderails for safety reasons.

Residents shall be physically restrained only as provided for in the Declaration of Residents' Rights, G.S. 131D-21 (5), and in accordance with the following:

- (1) The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days.
- (2) In emergency situations the administrator or supervisor-in-charge shall make the determination relative to necessity for the type and duration of the physical restraint to use until a physician is contacted. Contact shall be made within 24 hours.
- (3) The physician shall specify in the restraint order the medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked, loosened, or removed. Staff shall document the application, checking, loosening, or removing of the restraint in the resident's Medication Administration Record or approved equivalent.
- (4) The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders).
- (5) The physician ordering the physical restraint shall update the restraint order at a minimum of every six months.
- (6) If the resident's physician changes after admission to the home, the physician who is to attend the resident shall update and sign the existing restraint order.
- (7) The administrator is responsible for ensuring that staff who apply physical restraints are instructed in their use.

(h) The administrator must have specific written instructions recorded as to what to do in case of sudden illness, accident, or death of a resident.

(i) There must be an adequate supply of first aid supplies available in the home for immediate use.

(j) The administrator must make arrangements with the resident, his responsible person, the county department of social services or other appropriate party for appropriate health care as needed to enable the resident to be in the best possible health condition.

Statutory Authority G.S. 131D-2; 143B-153.

## SECTION .3100 - RECORDS AND REPORTS

### .3103 ADMISSION OR DISCHARGE

~~Forms are available free of charge, upon request, from the county department of social services. The administrator shall notify the county department of social services of an admission or discharge of a resident by the fifth day of the month following admission or discharge on Form DSS 1869. When there is an admission or discharge of a resident, the administrator or supervisor-in-charge shall notify the county department of social services by the fifth day of the month following admission or discharge. Notification shall be made by submitting the form for reporting admissions and discharges. The form does not need to be submitted if there have not been any admissions or discharges.~~

Statutory Authority G.S. 131D-2; 143B-153.

### .3104 POPULATION REPORT

The administrator or supervisor-in-charge ~~must~~ shall submit by ~~July 31~~ January 31 of each year an annual population report (~~Form DSS 1868~~) for the previous ~~fiscal~~ calendar year to the county department of social services. If the home closes during the year, the administrator or supervisor-in-charge ~~must complete Form DSS 1868~~ shall report for the ~~fiscal~~ previous calendar year to date of closing, and submit it to the county department of social services. The required form is available free of charge, upon request, from the county department of social services.

Statutory Authority G.S. 131D-2; 143B-153.

## TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment, Health, and Natural Resources, Division of Environmental Management intends to adopt rule(s) cited as 15A NCAC 20 .0101 - .0103, .0201 - .0204, .0301 - .0310, .0401 - .0402, .0501 - .0504.

*The proposed effective date of this action is July 1, 1992.*

*The public hearing will be conducted on the following dates and locations:*

February 19, 1992

7:00 p.m.

The Auditorium

Catawba Valley Community College  
Hickory, N.C.

February 24, 1992

7:00 p.m.

2nd Floor Courtroom  
Craven County Courthouse  
New Bern, N.C.

February 27, 1992

7:00 p.m.

Ground Floor Conference Room  
Archdale Building  
Raleigh, N.C.

*Reason for Proposed Action:* To establish requirements that owners and operators of underground storage tanks provide assurance to the state that they will have the financial capabilities to cleanup releases from those tanks. These rules are mandated by G.S. 143-215.94H.

*Comment Procedures:* Interested persons may contact Mr. J. William Reid, at (919) 733-8486 for more information regarding these rules. Written comments will be received for 30 days after publication of the notice. Requests and comments must be submitted to Mr. J. William Reid, DEM - Groundwater Section, 441 N. Harrington St., Raleigh, NC 27603. Mailed written comments must be postmarked no later than March 4, 1992.

*Fiscal Note:* These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on January 13, 1992, OSBM on January 13, 1992, N.C. League of Municipalities on January 13, 1992, and N.C. Association of County Commissioners on January 13, 1992.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 20 - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

SECTION .0100 - GENERAL CONSIDERATIONS

.0101 GENERAL

(a) The purpose of this Subchapter is to establish the requirements for financial responsibility for owners and operators of underground storage tanks located in North Carolina.

(b) The Department of Environment, Health, and Natural Resources (Department) shall administer the underground storage tank financial responsibility compliance program for the State of North Carolina.

(c) Department staff may conduct inspections as necessary to ensure compliance with this Subchapter.

*Statutory Authority G.S. 143-215.3 (a) (15); 143-215.94H; 143B-282 (2) (h).*

.0102 COPIES OF REFERENCED FEDERAL REGULATIONS

(a) Copies of applicable Code of Federal Regulations sections incorporated in this Subchapter are available for inspection at Department of Environment, Health, and Natural Resources regional offices. They are:

- (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28802;
- (2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;
- (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;
- (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(b) Copies of such regulations can be made at these regional offices for ten cents (\$.10) per page. Individual complete copies may be obtained from the U.S. Environmental Protection Agency, Office of Underground Storage Tanks, Post Office Box 6044, Rockville, Maryland 20850 for no charge.

*Statutory Authority G.S. 12-3.1 (c); 143-215.3 (a) (15); 143B-282 (2) (h).*

.0103 SUBSTITUTED SECTIONS

(a) References to sections of the Federal Regulations incorporated by reference will refer to those sections and any subsequent amendments and editions.

(b) References to 40 CFR 280.93 are to be taken as references to Rule .0204 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.93(a) corresponds to 15A NCAC 20 .0204(a) and (b); 40 CFR 280.93(b) corresponds to 15A NCAC 20 .0204(c) and (d); 40 CFR 280.93(c) and (d) have no correspondence; and 40 CFR 280.93(e), (f), (g), and (h) correspond to 15A NCAC 20 .0204(f), (g), (h), and (i), respectively.

(c) References to 40 CFR 280.95 are to be taken as references to Rule .0302 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.95(a), (e), (f), and (g) correspond to 15A NCAC 20 .0302(a), (c), (d), and (e), respectively; 40 CFR 280.95(b) and (c) correspond to 15A NCAC 20 .0302(b); 40 CFR 280.95(d) corresponds to 15A NCAC 20 .0302(f) and (g).

*Statutory Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6.*

SECTION .0200 - PROGRAM SCOPE

.0201 APPLICABILITY

(a) The provisions for "Applicability" contained in 40 CFR 280.90 are hereby incorporated by reference including any subsequent amendments and editions, except that these provisions will apply to all underground storage tanks as defined herein. Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) A dual usage tank will be classified as a commercial tank if the commercial use is an integral part of its history.

*Statutory Authority G.S. 143-215.94A; 143-215.94H; 143-215.94T; 150B-21.6.*

.0202 COMPLIANCE DATES

The provisions for "Compliance Dates" contained in 40 CFR 280.91 are hereby incorporated by reference including any subsequent amendments and editions, except that "owners" is replaced by "owners and operators" and "owning" is replaced by "owning and or operating" throughout this Section. Locations where this material is available are specified in Rule .0102 of this Subchapter.

*Statutory Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6.*

**.0203 DEFINITIONS**

(a) The definitions contained in 15A NCAC 2N .0203 and 40 CFR 280.92 are hereby incorporated by reference including any subsequent amendments and editions, except for "Occurrence" and "Underground Storage Tank". Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) The following definitions are defined for the purposes of this Subchapter:

- (1) "Annual Tank Operating Fee" is a fee paid by the owner or operator of each commercial underground storage tank to the Department for deposit into the Commercial Fund. This fee is assessed on an annual basis for all underground storage tanks in use on January 1 of each year beginning with 1989 and on a pro-rated monthly basis during the first year of use for tanks first brought into use after January 1, 1989. If a tank is taken out of use, the appropriate fees are due for the period prior to its removal from use.
- (2) "Dual Usage Tank" means an underground storage tank which has had varied usage which would cause the tank to be considered a commercial underground storage tank during certain times and a noncommercial underground storage tank during other times and for which both the commercial and the noncommercial usages were integral to the operation or existence of the tank.
- (3) "Director of the Implementing Agency" means the Director of the Division of Environmental Management.
- (4) "Occurrence" means one or more releases which result(s) in a single plume of soil, groundwater, and/or surface water contamination (consisting of free product and/or associated dissolved contaminants exceeding standards established under 15A NCAC 2L .0202 or any other applicable laws, rules, or regulations) emanating from a given site.
- (5) "Underground Storage Tank" is taken for the purposes of this Subchapter to mean any Commercial Underground Storage Tank as defined in G.S. 143-215.94A.

Statutory Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6.

**.0204 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY**

(a) Owners or operators of petroleum underground storage tanks located in North Carolina

must demonstrate financial responsibility for at least one million dollars (\$1,000,000) per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

(b) Compliance with all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund shall constitute demonstration of financial responsibility for that amount specified in Paragraph (a) of this Rule which is in excess of the sum of the amounts required to be paid per occurrence by the owner or operator for cleanup and for third-party claims.

(c) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

- (1) For owners or operators of one to 100 petroleum underground storage tanks, one million dollars (\$1,000,000); and
- (2) For owners or operators of 101 or more petroleum underground storage tanks, two million dollars (\$2,000,000).

(d) If all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund are complied with, the owner or operator must provide an annual aggregate financial assurance of at least the sum of the amounts specified in Subparagraphs (d)(1), (2), and (3) of this Rule as follows:

- (1) The average maximum amount required to be paid by an owner or operator per occurrence for cleanup as determined in accordance with Paragraph (c) of this Rule;
- (2) The average maximum amount required to be paid by an owner or operator per occurrence for third party claims as determined in accordance with Paragraph (c) of this Rule; and
- (3) Three percent of the multiple of:
  - (A) the amount in Subparagraph (d)(1) of this Rule; and
  - (B) the number of tanks being covered.

(e) An owner or operator providing financial assurance for more than one underground storage tank where the various tanks do not all require the same maximum amounts to be paid per occurrence for cleanup and or third party claims



shall calculate an average maximum amount to be paid per occurrence as follows:

- (1) Determine the maximum amount to be paid per occurrence for each underground storage tank being assured;
- (2) Sum the values determined in Subparagraph (e)(1) of this Rule and divide by the number of underground storage tanks being assured.

(f) Owners or operators shall annually review the amount of aggregate assurance provided. The amounts of required financial responsibility and annual aggregate assurance shall be adjusted to that required in Paragraphs (a), (b), (c), and (d) of this Rule. All changes in status, including installations and closures, shall be reported to the Department, and all fees due shall be paid in accordance with applicable laws, rules, and regulations.

(g) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(h) The amounts of assurance required under this Rule exclude legal defense costs.

#### .0302 SELF INSURANCE

(a) Assurance of financial responsibility may be provided by an owner or operator as a self-insurer if the owner or operator has complied with all of the laws, rules, and regulations relative to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the owner or operator qualifies to be a self-insurer by passing the financial test in Paragraph (b) of this Rule or establishes a Trust Fund as set out in Paragraph (b) of this Rule.

(b) To qualify as an insurer, an owner, operator, and/or guarantor must meet the following criteria based on year-end financial statements for the latest completed fiscal year.

(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least:

(A) The sum of the amounts specified in Subparagraphs (b)(1)(A)(i) and (ii) of this Rule as follows, not to exceed three million dollars (\$3,000,000) and not to be less than one hundred fifty thousand dollars (\$150,000):

(i) the multiple of:

(I) the number of tanks being covered by this mechanism,

(II) the cleanup costs required to be paid by the owner or operator per occurrence in accordance with G.S. 143-215.94B(b),

(III) the proportion of the required financial assurance required pursuant to Rule .0204 of this Subchapter being covered by this mechanism, and

(IV) a constant representing an average value per tank calculated from 0.05 for each underground storage tank covered by this mechanism which is in compliance with any performance standards required on December 22, 1998, and 0.18 for each underground storage tank covered by this mechanism which is not in compliance with any performance standards required on December 22, 1998.

(ii) two percent of the multiple of:

(I) the number of tanks being covered by this mechanism,

(II) the amount for third party claims required to be paid by the owner or operator per occurrence in accordance with G.S. 143-215.94B(b), and

(III) the proportion of the required financial assurance required pursuant to Rule .0204 of the Subchapter being covered by this mechanism;

(i) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(j) Assurance for petroleum underground storage tanks located in North Carolina must be provided separately from that provided for petroleum underground storage tanks not located in North Carolina.

Statutory Authority G.S. 143-215.94H; 143-215.94T.

#### SECTION .0300 - ASSURANCE MECHANISMS

##### .0301 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS

The provisions for "Allowable Mechanisms and Combinations of Mechanisms" contained in 40 CFR 280.94 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. "Guarantee" and "Surety Bond" are acceptable mechanisms in the State of North Carolina.

Statutory Authority G.S. 143-215.94H; 150B-21.6.



- (B) Any amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;
- (C) Ten times the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and
- (D) Ten times the sum of current plugging and abandonment cost estimates for injection wells for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.
- (2) A Guarantor must have a net worth at least two hundred thousand dollars (\$200,000) greater than that required by Subparagraph (b)(1) of this Rule.
- (3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in Paragraph (g) of this Rule, and must do one of the following:
- (A) Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;
- (B) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
- (C) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
- (4) The firm's year-end financial statements must be independently compiled and cannot include an adverse accountant's report or a "going concern" qualification.
- (c) If an owner or operator is acting as a self-insurer in accordance with Paragraph (b) of this Rule and finds that he or she no longer meets the requirements of the test in Paragraph (b) of this Rule based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.
- (d) The Department may require reports of financial condition at any time from a guarantor and from an owner or operator who is self insuring. If the Department finds, on the basis of such reports or other information, that the owner, operator, or guarantor no longer meets the financial test requirements of Paragraph (b) of this Rule, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.
- (e) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.
- (f) To demonstrate that it meets the financial test under Paragraph (b) of this Rule, the chief financial officer of the owner or operator and/or guarantor must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as in Paragraph (g) of this Rule, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- (g) LETTER FROM CHIEF FINANCIAL OFFICER  
I, [insert: name of chief financial officer], the chief financial officer of [insert: name and address of the owner or operator, or guarantor] have prepared this letter in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).  
Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]:  
[List or attach the following information for each facility: the name and address of the facility where tanks assured by this financial test are located, facility number(s) assigned by the Department, and date(s) of last payment of annual tank operating fee(s). If separate mechanisms or combinations of mechanisms, other than the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund are being used to assure any of the tanks at this facility, list each tank assured by this financial test.]

# PROPOSED RULES

[When appropriate, include the following for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells:

A {insert: "financial test," and/or "guarantee"} is also used by this {insert: "owner or operator," or "guarantor"} to demonstrate evidence of financial responsibility in the following amounts under EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (including §264.143 and §265.143) .....	\$ _____
Post-Closure Care (including §264.145 and §265.145) .....	\$ _____
Liability Coverage (including §264.147 and §265.147) .....	\$ _____
Corrective Action (including §264.101(b)) .....	\$ _____
Plugging and Abandonment (including §144.63) .....	\$ _____
Total .....	\$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse report or a "going concern" qualification from an independent accountant on his financial statements for the latest completed fiscal year.

1. a. Number of USTs being covered .....
- b. Average maximum amount of cleanup costs  
(Rule .0204(d)(1)) .....
- c. Average maximum amount of third-party costs  
(Rule .0204(d)(2)) .....
- d. proportion covered .....
- e. constant (Rule .0302(b)(1)(A)(i)) .....
- f. Cleanup Total (a X b X d X e) .....
- g. Third-Party Total (0.02 X a X c X d) .....
- h. If Guarantor, list \$200,000 .....
2. Tangible assets applied to USTs not in North Carolina .....
3. Ten times the costs for Hazardous Waste Facilities and Injection Wells .....
4. Sum of lines 1f, 1g, 1h, and 2 .....
5. Total tangible assets .....
6. Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line and add that amount to line 7] .....
7. Tangible net worth [subtract line 6 from line 5] .....

- |  | Yes   | No    |
|--|-------|-------|
| 8. Is line 7 at least [for an owner or operator: \$150,000; for a guarantor: \$350,000]? .....   | _____ | _____ |
| 9. Is line 7 equal to or greater than line 4? .....  | _____ | _____ |
| 10. Has a compilation report been issued by an certified public accountant or certified public accounting firm? .....  | _____ | _____ |
| 11. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? .....   | _____ | _____ |
| 12. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? .....  | _____ | _____ |
| 13. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? .....   | _____ | _____ |
| 14. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met] ..... | _____ | _____ |

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 20 .0302, as such regulations were constituted on the date shown immediately below, and that the information contained herein is complete and accurate.

[Signature of chief financial officer]

[Name]

[Title]

[Date]

(h) The provisions for "Trust Fund" contained in 40 CFR 280.102 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

*Statutory Authority G.S. 58-2-205; 143-215.94H; 150B-21.6.*

**.0303 GUARANTEE**

The provisions for "Guarantee" contained in 40 CFR 280.96 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

*Statutory Authority G.S. 143-215.94H; 150B-21.6.*

**.0304 INSURANCE AND RISK RETENTION GROUP COVERAGE**

The provisions for "Insurance and Risk Retention Group Coverage" contained in 40 CFR 280.97 are hereby incorporated by reference including any subsequent amendments and editions, except that "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states" in §§280.97(b)(1), (b)(2), and (c) is replaced by "licensed, registered, or otherwise authorized to provide insurance in North Carolina". Locations where this material is available are specified in Rule .0102 of this Subchapter.

*Statutory Authority G.S. 58-2-125; 58-22; 143-215.94H; 150B-21.6.*

**.0305 SURETY BOND**

The provisions for "Surety Bond" contained in 40 CFR 280.98 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

*Statutory Authority G.S. 143-215.94H; 150B-21.6.*

**.0306 LETTER OF CREDIT**

The provisions for "Letter of Credit" contained in 40 CFR 280.99 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

*Statutory Authority G.S. 143-215.94H; 150B-21.6.*

**.0307 STANDBY TRUST FUND**

The provisions for "Standby Trust Fund" contained in 40 CFR 280.103 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

*Statutory Authority G.S. 143-215.94H; 150B-21.6.*

**.0308 INSURANCE POOLS**

(a) Insurance Pools established by owners and operators may be used alone or in combination to demonstrate financial assurance in accordance with Rules .0204 and .0301 of this Subchapter.

(b) Insurance Pools must comply with the requirements of G.S. 143-215.94I and any other requirements imposed by the Commissioner of Insurance of the State of North Carolina and any relevant law, rule, or regulation.

(c) Each owner and operator provided financial assurance through an Insurance Pool must maintain a certificate of insurance issued by the Insurance Pool listing, at least:

- (1) the name and address of the member;
- (2) the location of the facilities owned by that member where underground storage tanks are being insured by the pool;
- (3) the number of insured underground storage tanks at each facility;
- (4) the capacity of each insured underground storage tank;
- (5) the amount of insurance provided for each underground storage tank; and
- (6) the name, address, and signature of the Administrator of the Insurance Pool.

*Statutory Authority G.S. 143-215.94H; 143-215.94I.*

**.0309 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS**

The provisions for "Substitution of Financial Assurance Mechanisms by Owners or Operators" contained in 40 CFR 280.104 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Statutory Authority G.S. 143-215.94H;  
150B-21.6.

**.0310 CANCELLATION OR NONRENEWAL  
BY A PROVIDER OF ASSURANCE**

The provisions for "Cancellation or Non-renewal by a Provider of Financial Assurance" contained in 40 CFR 280.105 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Statutory Authority G.S. 143-215.94H;  
150B-21.6.

**SECTION .0400 - RESPONSIBILITIES OF  
OWNERS AND OPERATORS**

**.0401 REPORTING BY OWNER OR  
OPERATOR**

The provisions for "Reporting by Owner or Operator" contained in 40 CFR 280.106 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Statutory Authority G.S. 143-215.94H;  
150B-21.6.

**.0402 RECORD KEEPING**

(a) The provisions for "Record Keeping" contained in 40 CFR 280.107 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) In addition to the requirements incorporated in Paragraph (a) of this Rule, the following are required as evidence of financial responsibility:

- (1) An owner or operator using an "Insurance Pool" must maintain a copy of the signed insurance certificate as specified in Rule .0308(c) of this Subchapter.
- (2) Each owner or operator must maintain copies of cancelled checks for payment of annual tank operating fees for the preceding three years or any alternate evidence of payment of the annual tank operating fees supplied by the Department.

Statutory Authority G.S. 143-215.94H;  
150B-21.6.

**SECTION .0500 - CHANGES IN STATUS**

**.0501 DRAWING ON FINANCIAL**

**ASSURANCE MECHANISMS**

The provisions for "Drawing on Financial Assurance Mechanisms" contained in 40 CFR 280.108 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Statutory Authority G.S. 143-215.94H;  
150B-21.6.

**.0502 RELEASE FROM THE  
REQUIREMENTS**

The provisions for "Release From the Requirements" contained in 40 CFR 280.109 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Statutory Authority G.S. 143-215.94H;  
150B-21.6.

**.0503 INCAPACITY OF OWNER OR  
OPERATOR OR PROVIDER OF  
ASSURANCE**

(a) The provisions for "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance" contained in 40 CFR 280.110, except for Subsection 280.110(d), are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) Within 60 days after receipt of notification that the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain financial assurance for the full amounts specified in Rule .0204, Paragraphs (a) and (c), of this Subchapter.

(c) Within 60 days after receipt of notification that the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for additional cleanup actions to be undertaken by the Department, any owner or operator or guarantor who self insures or guarantees based on Rule .0302, Paragraph (b), of this Subchapter must obtain financial assurance for at least twice the amount specified in Rule .0204, Paragraph (d), of this Subchapter assured in accordance with Rule .0302, Paragraph (b), of this Subchapter.

Statutory Authority G.S. 143-215.94H;  
143-215.94T; 150B-21.6.

**.0504 REPLENISHMENT**

## PROPOSED RULES

(a) The provisions for "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" contained in 40 CFR 280.111 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) If at any time after a standby trust is funded upon the instruction of the Department with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced to less than the amount for which the owner or operator is responsible per occurrence for third party claims, the owner or operator shall within 60 days from which the funds were drawn:

- (1) Replenish the value of financial assurance to equal the full amount of coverage required, or
- (2) Acquire another financial assurance mechanism for the full amount of coverage provided by the Standby Trust.

Statutory Authority G.S. 143-215.94H;  
143-215.94T; 150B-21.6.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10C .0402.*

*The proposed effective date of this action is May 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on February 18, 1992 in Room 386, Archdale Building, 512 N. Salisbury St., Raleigh, NC 27604-1188.*

*Reason for Proposed Action: The mesh size is no longer necessary because manufactured cast nets have mesh sizes which are larger than the current restriction.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from February 3, 1992 to March 4, 1992. Such written*

*comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27604-1188.*

### CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

#### SUBCHAPTER 10C - INLAND FISHING REGULATIONS

##### SECTION .0400 - NONGAME FISH

##### .0402 TAKING BAIT FISHES AND FISH BAIT

(a) It is unlawful to take bait fishes in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net; ~~with a square mesh of not more than three-eighths inch;~~
- (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them.

(b) Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water. No person shall take more than 200 bait fish from inland fishing waters during one day. It is unlawful to take bait fishes or fish bait from designated public mountain trout waters and:

- (1) Chatham County:  
Deep River  
Rocky River  
Bear Creek
- (2) Lee County:  
Deep River
- (3) Moore County:  
Deep River
- (4) Randolph County:  
Deep River below the Coleridge Dam  
Fork Creek.

Statutory Authority G.S. 113-134; 113-135;  
113-272; 113-272.3; 113-292.

*Adopted rules filed by the Department of Revenue are published in this section. This department is not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.*

*Effective October 1, 1991, the Departments of Correction and Revenue are subject to G.S. 150B, Article 2A.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

**TITLE 17  
DEPARTMENT OF REVENUE**

**CHAPTER 9  
MOTOR FUELS TAX DIVISION**

**SUBCHAPTER 9G - MOTOR FUELS TAX DIVISION**

**SECTION .0100 - APPLICATION FOR AND CANCELLATION OF LICENSE AS A  
DISTRIBUTOR**

**.0105 TYPES OF ACCEPTABLE BONDS**

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Division, executed by any surety company licensed to do business in this State. The Division will also accept bonds secured by the following types of collateral:

- (1) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (2) Negotiable U.S. Treasury bonds;
- (3) Negotiable U.S. Treasury notes;
- (4) Public School Facilities bonds;
- (5) Housing Finance Agency bonds;
- (6) General Obligation Bonds of the State of North Carolina or its political subdivisions; and
- (7) Revenue Bonds of the State of North Carolina or its political subdivisions with a rating of at least BAA or BBB.

Notes and bonds tendered as collateral must have a fair market value at least equal to 115 percent of the collateral required.

*History Note: Statutory Authority G.S. 105-262; 105-441; 105-442;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992; October 1, 1991; March 1, 1987.*

**.0107 IRREVOCABLE LETTER OF CREDIT**

The Motor Fuels Tax Division will accept an irrevocable letter of credit executed on the Department's Form Gas. 1213.

*History Note: Statutory Authority G.S. 105-262; 105-433;  
Eff. January 1, 1992.*

**SUBCHAPTER 9H - SPECIAL FUELS TAX**

**SECTION .0100 - SPECIAL FUELS LICENSES**

**.0103 TYPES OF ACCEPTABLE BONDS**

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by the Division, executed by any surety company licensed to do business in this State. The Division will also accept bonds secured by the following types of collateral:

- (1) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (2) Negotiable U.S. Treasury bonds;
- (3) Negotiable U.S. Treasury notes;
- (4) Public School Facilities bonds;
- (5) Housing Finance Agency bonds;
- (6) General Obligation Bonds of the State of North Carolina or its political subdivisions; and
- (7) Revenue Bonds of the State of North Carolina or its political subdivisions with a rating of at least BAA or BBB.

Notes and bonds tendered as collateral must have a fair market value at least equal to 115 percent of the collateral required.

*History Note: Statutory Authority G.S. 105-449.5; 105-449.32;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992; October 1, 1991; March 1, 1987.*

#### **.0105 IRREVOCABLE LETTER OF CREDIT**

The Motor Fuels Tax Division will accept an irrevocable letter of credit executed on the Department's Form Gas. 1213.

*History Note: Statutory Authority G.S. 105-449.5; 105-449.32;  
Eff. January 1, 1992.*

### **SECTION .0200 - CONSIGNMENT: SALES INVOICES: TAX FREE DELIVERIES: METERS: MILEAGES**

#### **.0201 TAX DUE**

The road tax and inspection fee is due on sales of fuels intended to propel a motor vehicle that are made by suppliers to users, bulk users or resellers. Suppliers are required to collect and remit the motor fuels tax and inspection fee on all sales of special fuels to bulk users and resellers except deliveries into separate tanks that are for non-highway use only. The tanks and dispensers must be plainly marked "for non-highway use only." A supplier that makes deliveries of special fuels to resellers on consignment may elect to pay the road tax and inspection fee on the total number of gallons delivered into storage for highway use or the total gallons withdrawn from storage for highway use. Bulk users and resellers are not permitted to have common storage of tax free fuel for highway use and non-highway use.

*History Note: Statutory Authority G.S. 105-449.16; 105-449.19; 105-449.32;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992; March 1, 1987.*

### **SECTION .0300 - LIQUIFIED PETROLEUM GAS**

#### **.0301 PROPANE GAS DISTRIBUTORS USING OR SELLING**

The term suppliers [as defined in G.S. 105-449.2(10)] includes any propane gas distributor using or selling special fuels. It is unlawful for a supplier to sell and/or use special fuels without first obtaining a supplier's license issued by the Motor Fuels Tax Division. No fee is due for the license, and it is continuous until cancelled by the Department of Revenue or licensee.

*History Note: Statutory Authority G.S. 105-449.19; 105-449.32;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992; March 1, 1987.*

### **SUBCHAPTER 9I - HIGHWAY FUEL USE TAX**

#### **SECTION .0100 - OPERATIONS**

##### **.0102 OPERATIONS OF VEHICLES EXCLUDED FROM REPORTS**

(a) Every motor carrier shall report the operations of all subject vehicles in its fleet when calculating fuel used in North Carolina pursuant to G.S. 105-449.44 for purposes of filing the report required by

G.S. 105-449.45, except that the motor carrier may exclude such vehicles that operate exclusively intrastate.

(b) Vehicles using special fuels that operate wholly within North Carolina must be reported on the appropriate special fuels report, i.e.; supplier, reseller, bulk user or user.

*History Note: Statutory Authority G.S. 105-262; 105-449.32; 105-449.37; 105-449.44; 105-449.45;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992; February 1, 1990; March 1, 1987.*

#### **.0103 REGISTRATION CARDS AND VEHICLE IDENTIFICATION MARKERS**

*History Note: Statutory Authority G.S. 105-262; 105-449.32; 105-449.37; 105-449.45; 105-449.47;  
Eff. January 1, 1983;  
Amended Eff. February 1, 1990; March 1, 1987;  
Repealed Eff. January 1, 1992.*

### **SECTION .0300 - CREDITS AND REFUNDS**

#### **.0303 AMOUNT OF BOND REQUIRED**

The Secretary may require a motor carrier to furnish a bond. The amount of bond required is based on the larger of the following amounts:

- (1) Five hundred dollars (\$500.00).
  - (2) Four times the motor carrier's average tax liability or refund for a reporting period.
- For bonds exceeding five hundred dollars (\$500.00), the amount of bond shall be rounded to the nearest one thousand dollars (\$1,000.00). If the amount required is exactly between two one thousand dollar (\$1,000.00) increments, the amount shall be rounded to the higher of the two.

*History Note: Statutory Authority G.S. 105-262; 105-449.40;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992.*

#### **.0304 TYPES OF ACCEPTABLE BONDS**

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Division, executed by any surety company licensed to do business in this State. The Division will also accept bonds secured by the following types of collateral:

- (1) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (2) Negotiable U.S. Treasury bonds;
- (3) Negotiable U.S. Treasury notes;
- (4) Public School Facilities bonds;
- (5) Housing Finance Agency bonds;
- (6) General Obligation Bonds of the State of North Carolina or its political subdivisions; and
- (7) Revenue Bonds of the State of North Carolina or its political subdivisions with a rating of at least BAA or BBB.

Notes and bonds tendered as collateral must have a fair market value at least equal to 115 percent of the collateral required.

*History Note: Statutory Authority G.S. 105-262; 105-449.40;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992; October 1, 1991; March 1, 1987.*

### **SECTION .0400 - TAX REPORTS AND MILES PER GALLON FACTORS**

#### **.0401 QUARTERLY TAX REPORT**

*History Note: Statutory Authority G.S. 105-262; 105-449.39; 105-449.42;  
105-449.44 through 105-449.45;  
Eff. January 1, 1983;  
Amended Eff. February 1, 1990; March 1, 1987;  
Repealed Eff. January 1, 1992.*



**SECTION .0500 - REGISTRATION CARDS AND IDENTIFICATION MARKERS**

**.0501 APPLICATION FOR VEHICLE REGISTRATION: FORM GAS. 1274**

*History Note: Statutory Authority G.S. 105-262; 105-449.3; 105-449.9; 105-449.32; 105-449.45; 105-449.47 through 105-449.48; 105-449.50;  
Eff. January 1, 1983;  
Amended Eff. February 1, 1990; March 1, 1987;  
Repealed Eff. January 1, 1992.*

**.0503 PERMITS: LEASES**

*History Note: Statutory Authority G.S. 105-262; 105-449.37;  
Eff. January 1, 1983;  
Amended Eff. February 1, 1990; March 1, 1987;  
Repealed Eff. January 1, 1992.*

**.0505 IMPORTANT NOTICE TO CARRIERS: FORM GAS. 1279**

*History Note: Statutory Authority G.S. 105-262; 105-449.39; 105-449.41 through 105-449.48;  
Eff. January 1, 1983;  
Repealed Eff. January 1, 1992.*

**.0506 DEALER: MANUFACTURER: DRIVEAWAY: TRANSPORTER**

Persons operating heavy vehicles with a dealer, manufacturer, driveaway or transporter license plate, issued either in North Carolina or other jurisdictions must obtain a fuel license and a vehicle identification marker, from the Motor Fuels Tax Division or another International Fuel Tax Agreement (IFTA) jurisdiction. The marker does not have to be mounted on the vehicle. These vehicles must have a fuel license and vehicle identification marker at all times while operating in North Carolina.

*History Note: Statutory Authority G.S. 105-262; 105-449.45; 105-449.47; 105-449.48; 105-449.50;  
Eff. March 1, 1987;  
Amended Eff. January 1, 1992; October 1, 1991; February 1, 1990.*

**SUBCHAPTER 9J - GASOLINE: SPECIAL FUELS AND KEROSENE INSPECTION**

**SECTION .0200 - KEROSENE IMPORTER**

**.0203 TYPES OF ACCEPTABLE BONDS**

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Division, executed by any surety company licensed to do business in this State. The Division will also accept bonds secured by the following types of collateral:

- (1) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (2) Negotiable U.S. Treasury bonds;
- (3) Negotiable U.S. Treasury notes;
- (4) Public School Facilities bonds;
- (5) Housing Finance Agency bonds;
- (6) General Obligation Bonds of the State of North Carolina or its political subdivisions; and
- (7) Revenue Bonds of the State of North Carolina or its political subdivisions with a rating of at least BAA or BBB.

Notes and bonds tendered as collateral must have a fair market value at least equal to 115 percent of the collateral required.

*History Note: Statutory Authority G.S. 105-262; 105-269.3; 119-16.2;  
Eff. January 1, 1983;  
Amended Eff. January 1, 1992; October 1, 1991; March 1, 1987.*

# LIST OF RULES CODIFIED

*The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.*

## Key:

<i>Citation</i>	=	<i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	=	<i>Adopt</i>
<i>AM</i>	=	<i>Amend</i>
<i>RP</i>	=	<i>Repeal</i>
<i>With Chgs</i>	=	<i>Final text differs from proposed text</i>
<i>Eff. Date</i>	=	<i>Date rule becomes effective</i>
<i>Temp. Expires</i>	=	<i>Rule was filed as a temporary rule and expires on this date</i>

## NORTH CAROLINA ADMINISTRATIVE CODE

DECEMBER 1991

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	15A	Environment, Health, and Natural Resources
4	Economic and Community Development	16	Public Education
9	Governor/Lt. Governor	17	Revenue
10	Human Resources	19A	Transportation
11	Insurance	21	Occupational Licensing Boards
13	Labor	19 - Electrolysis	
14A	Crime Control and Public Safety	32 - Medical Examiners	

	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
2	NCAC 9L .2101 - .2103	•				02 01 92	
	.2104	•			•	02 01 92	
	.2105 - .2107	•				02 01 92	
4	NCAC 6C .0311		•		•	02 01 92	
	.0401		•			02 01 92	
	.0402 - .0403		•		•	02 01 92	
	.1301		•		•	02 01 92	
9	NCAC 3L .0100 - .1200 transferred and recodified to 15A NCAC 1J .0100 - .1200					12 05 91	
10	NCAC 26D .0016		•			02 01 92	
	26H .0107		•		•	02 01 92	
	.0209	•				02 01 92	
	.0402			•		02 01 92	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10	NCAC	26H	.0508		•			02 01 92	
		50B	.0101 - .0102		•			02 01 92	
11	NCAC	12	.0303			•		02 01 92	
			.0305			•		02 01 92	
			.0306		•			02 01 92	
			.0307		•		•	02 01 92	
			.0312		•		•	02 01 92	
			.0317		•			02 01 92	
			.0318			•		02 01 92	
			.0321 - .0322		•		•	02 01 92	
			.0323		•			02 01 92	
			.0325 - .0326	•			•	02 01 92	
			.0402			•		02 01 92	
			.0404		•			02 01 92	
			.0414			•		02 01 92	
			.0420		•		•	02 01 92	
			.0426 - .0427		•		•	02 01 92	
			.0431		•		•	02 01 92	
			.0434		•		•	02 01 92	
			.0447		•		•	02 01 92	
			.0448		•			02 01 92	
			.0460	•				02 01 92	
			.0504			•		02 01 92	
			.0514		•		•	02 01 92	
			.0517		•		•	02 01 92	
			.0526		•		•	02 01 92	
			.0527			•		02 01 92	
			.0537			•		02 01 92	
			.0549		•			02 01 92	
			.0553		•		•	02 01 92	
			.0554			•		02 01 92	
			.0555 - .0557		•		•	02 01 92	
			.0558			•		02 01 92	
			.0559	•			•	02 01 92	
			.1101 - .1107	•			•	02 01 92	
13	NCAC	7C	.0101		•			03 06 92	
14A	NCAC	9B	.0101			•		01 01 92	

*LIST OF RULES CODIFIED*

Citation		AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
15A	NCAC 1J .0100 - .1200 transferred and recodified from 9 NCAC 3L .0100 - .1200					12 05 91	
	3J .0104		•		•	02 01 92	
	3K .0105		•		•	02 01 92	
	3M .0503 - .0504		•			02 01 92	
	.0507		•		•	02 01 92	
	4A .0001		•			02 01 92	
	.0006		•			02 01 92	
	4B .0009		•			02 01 92	
	.0016		•		•	02 01 92	
	.0018		•		•	02 01 92	
	.0025		•			02 01 92	
	13A .0006		•			02 01 92	
	.0009 - .0010		•		•	02 01 92	
	18A .1945		•		•	02 01 92	
	18C .1534		•		•	02 01 92	
	19H .0702		•		•	02 01 92	
	24A .0202		•		•	02 01 92	
	.0302 - .0303		•		•	02 01 92	
	.0402		•		•	02 01 92	
16	NCAC 6D .0103		•		•	07 01 92	
17	NCAC 9G .0105		•			01 01 92	
	.0107	•				01 01 92	
	9H .0103		•			01 01 92	
	.0105	•				01 01 92	
	.0201		•			01 01 92	
	.0301		•			01 01 92	
	9I .0102		•			01 01 92	
	.0103			•		01 01 92	
	.0303 - .0304		•			01 01 92	
	.0401			•		01 01 92	
	.0501			•		01 01 92	
	.0503			•		01 01 92	
	.0505			•		01 01 92	
	.0506		•			01 01 92	

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*LIST OF RULES CODIFIED*

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Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
17	NCAC	9J	.0203		•			01/01/92	
19A	NCAC	3D	.0801		•			02/01/92	07/30/92
21	NCAC	19	.0202	•			•	02/01/92	
	32B		.0101		•			01/01/92	
			.0305		•			01/01/92	
			.0314 - .0315		•			01/01/92	

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

*Temporary Rules are noted by "\*". These Rules have already gone into effect.*

## ADMINISTRATION

### State Construction

<i>1 NCAC 30F .0101 - Authority</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0103 - Definitions</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0202 - Pre-Bid Conferences and Site Reviews</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0301 - Definitions</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0302 - Overall Job Performance</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0303 - Interim Contractor Evaluation</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0305 - Report Compilation</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0401 - Post-Occupancy Evaluation</i>	<i>RRC Objection 10/17/91</i>
<i>1 NCAC 30F .0403 - Appeals of Assigned Eval or Disqual from Bidding</i>	<i>RRC Objection 10/17/91</i>

## AGRICULTURE

### Plant Industry

<i>2 NCAC 48E .0101 - Definitions</i>	<i>RRC Objection 10/17/91</i>
<i>Agency Revised Rule</i>	<i>RRC Objection 10/17/91</i>
<i>Agency Responded</i>	<i>No Action 12/19/91</i>

## CRIME CONTROL AND PUBLIC SAFETY

### State Highway Patrol

<i>14A NCAC 9H .0304 - Notifying Registered Owner</i>	<i>RRC Objection 12/19/91</i>
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## ECONOMIC AND COMMUNITY DEVELOPMENT

### Credit Union Division

<i>4 NCAC 6C .0311 - Surety Bond and Insurance Coverage</i>	<i>RRC Objection 11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/19/91</i>
<i>4 NCAC 6C .0401 - Delinquent Loans and Loan Losses</i>	<i>RRC Objection 11/21/91</i>
	<i>Obj. Removed 12/19/91</i>
<i>4 NCAC 6C .0402 - Charge-Off of Uncollectible Loans</i>	<i>RRC Objection 11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/19/91</i>
<i>4 NCAC 6C .0403 - Real Estate Loans</i>	<i>RRC Objection 11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/19/91</i>
<i>4 NCAC 6C .1301 - Liquidity Reserves</i>	<i>RRC Objection 11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/19/91</i>

## EDUCATION

### Elementary and Secondary Education

<i>16 NCAC 6D .0103 - Graduation Requirements</i>	<i>ARRC Objection 9/19/91</i>
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## RRC OBJECTIONS

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No Response from Agency		10/17/91
Agency Revised Rule	Obj. Removed	12/19/91

### ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

#### Coastal Management

15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications	RRC Objection	10/17/91
15A NCAC 7M .0201 - Declaration of General Policy	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
15A NCAC 7M .0202 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
15A NCAC 7M .0303 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
15A NCAC 7M .0403 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
15A NCAC 7M .0901 - Declaration of General Policy	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91

#### Health: Epidemiology

15A NCAC 19A .0202 - Control Measures - HIV	RRC Objection	10/17/91
15A NCAC 1911 .0702 - Research Requests	RRC Objection	11/21/91
Agency Revised Rule	Obj. Removed	12/19/91

#### Sedimentation Control

15A NCAC 4A .0005 - Definitions	RRC Objection	12/19/91
15A NCAC 4C .0007 - Procedures: Notices	RRC Objection	12/19/91

### HUMAN RESOURCES

#### Facility Services

10 NCAC 3J .2905 - Personal Hygiene Items	RRC Objection	10/17/91
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#### Mental Health: General

10 NCAC 14S .0102 - Communication Rights	ARRC Objection	9/19/91
Agency Responded		10/17/91
10 NCAC 14S .0103 - Living Environment	ARRC Objection	9/19/91
Agency Responded		10/17/91

### INSURANCE

#### Life and Health Division

11 NCAC 12 .0507 - Fraternal Orders: Societies and Associations	RRC Objection	12/19/91
11 NCAC 12 .1202 - Definitions	RRC Objection	12/19/91
11 NCAC 12 .1209 - Discrimination	RRC Objection	12/19/91

### LICENSING BOARDS AND COMMISSIONS

#### Certified Public Accountant Examiners

* 21 NCAC 8G .0313 - Firm Name	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91

Electrolysis Examiners

\* 21 NCAC 19 .0202 - App Licensure//Electrologist Practicing/1/1/92  
Agency Revised Rule

*RRC Objection* 11/21/91  
*Obj. Removed* 12/19/91

STATE PERSONNEL

Office of State Personnel

25 NCAC 1L .0301 - Purpose  
Agency Withdrew Rule

*RRC Objection* 11/21/91  
12/19/91



*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**15A NCAC 7J .0301 - WHO IS ENTITLED TO A CONTESTED CASE HEARING**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 07J .0301(b) void as applied in *Lucy R. Hanson, Stanley P. and Jean C. Szwed, Petitioners v. N.C. Department of Environment, Health, and Natural Resources, Division of Coastal Management, Respondent* (91 EHR 0551, 91 EHR 0557).

**15A NCAC 21D .0802(b)(2) - AVAILABILITY**

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

**15A NCAC 21D .0805 - DECISION**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0805 void as applied in *Glenn E. Davis/Davis Grocery, Petitioner v. N.C. Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, WIC Section, Respondent* (91 EHR 0694).

# NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

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- AO - Administrative Order
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- C - Correction
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